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THE

PRINCIPLES OF HINDU LAW.

THE COMMENTARIES.

BY

JOGENDRA CHUNDER GHOSE, M.A., B.L., RAI BAHADUR

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DEDICATED

TO

MY FATHER

SIR CHUDER MADHUB GHOSE, Kt.,

Who for many years as Judge and for sometime as
Acting Chie Justice of Bengal administered
the Law of this Country and helped in settling
the Law delt with in these pages, and
whose honoured name I have with
some diffidence ventured to asso-
ciate with this book, which is
the fruit of my labour of
many years.

भ्रमप्रमादसङ्कुलं पुस्तकं जीवनमूर्ते ।
क्षन्तव्यं सुजनैः सर्वैः सर्वदृशा च ब्रह्मणा

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INTRODUCTION.

The history of Hindu Law is the most wonderful chapter of the history of the world and of human institutions. Egypt and Babylon, Assyria and Persia, Greece and Rome have passed away without a vestige remaining of their ancient institutions and religions. Egypt, Babylon, Assyria and Persia have completely discarded their old religion, law and social institutions and adopted those of the Arabian prophet Mahomed

Greece and Rome were overrun by the barbarian hordes of Central Europe and there is little trace now remaining of the old Spartans, Athenians, Macedonians and Romans. The peoples of those countries have discarded the old gods of the Aryan peoples, they brought with them when they emigrated to those countries and have adopted the religion of Jesus Christ, who is said to have been a descendant of David the great king of the Jews. Only the system of law developed by the Roman emperors and jurists fortunately did not pass away. They were adopted by the Franks and Visigoths and are the ground-work on which the European systems of law are based. That is all that remains of the old Romans and its influence in civilizing the nations of the world and on the progress of man has been marvellous.

While the Muhammadan conquerors made the old Iranians Mahomedans at the point of the sword, they failed to make the majority of the Hindus to adopt that course. A large number indeed, of Indians have adopted the Muhammadan religion, law and social system and though belonging to the same race as the Hindus, they have become more like the Semitic Arabians than their Hindu brethren. The fanatical Afghans to whom the Hindu kafirs are proper objects of plunder and rapine are the descendants of the best of the Hindus, being of the race of Gandhari and Kaikayi and Panini. The Brahmins of India however, maintained the old religion and the old law, through the many vicissitudes of two thousand years, and succeeded in securing their ultimate victory. The old law, as we shall presently see, was the more important of the two.

The history of Hindu Law is practically the history of India. The Hindu law and the Hindu social customs are the most ancient of human institutions. We can trace in them the gradual development of the laws and institutions of the Aryan race from before 2500 B. C. to the year 1917. A.D. I have shown in the first volume of this book how the laws of Manu were settled before the Rig Veda and thus before the Aryans came to India. I have shown how the ancient marriage customs of the Rig

Veda, which are retained very nearly in their entirety even up to the present day by the twice-born Hindus, were taken from the ancient home of the Aryans to Europe by the Aryan emigrants like the Slavonians. The history of the development of the laws and institutions of the original race among its emigrating European and Indian branches is one of supreme importance.

So far as India and its unfortunate Hindu population are concerned, the tragic tenacity with which they have stuck to the old institutions and the old law is a wonderful phenomenon. We know little of the history of India from the time of the Rig Veda *i.e* 2500 B. C up to the time of Buddha *i.e.* 500 B. C. All that we know is that the old law and the old institutions were maintained. When Buddha overthrew the old religion, the old gods and the old caste system and India became Buddhist for a period of 1000 years, it might have been expected that the old law and the old social institutions would have been modified beyond recognition, as has happened in Ceylon, Burma and Siam. But that result did not ensue. During Buddhistic times, it appears that the marriage customs were not much disturbed and the laws of Manu were administered by Buddhist kings, with some modifications. The Brahmins never gave up their ancient privileges and remained the expounders of law and priests who celebrated the marriages of the well-to do classes. Hindu Law survived Hindu religion and withstood all foreign attacks. From 300 B. C. up to 700 A. D wave after wave of foreign invaders, Persians, Greeks, Scythians and Huns passed over India One would have expected that the Persian, Greek and Scythian religions and institutions would modify the Hindu laws and institutions. But fortunately for India at that time the pure religion of Buddha prevailed and all these invaders adopted it, being attracted by its excellence. As a consequence of it, the laws and institutions of Hindus were not disturbed.

But during these one thousand years, it appears that there were no orthodox commentaries of the law-books This period is a blank Asoka, Chandra Gupta and Kaniksha were Buddhists. Harshavardhana was more Buddhist than Hindu. Bengal and its Pala Kings were Buddhists. It is therefore not surprising that we have no commentaries of this period. Most of the Sutra works of the Rishis which contained the old law including that of Manu were practically lost During the time of the Sunga and the Kanva kings probably, the Brahmins put into versified form the old books, so far as they remembered them in the Puranas and the Smritis composed at the time. All the Smritis in verse were composed during this period, as has been proved by European investigators Even the Manu we have got was composed during this period. Yajnavalkya's Smriti, which is now the law of the Hindus, originally formed part of two Puranas and was published subsequently as a separate book.

We find a remarkable fact in these Smritis and Puranas They are divided into two rival classes, the Saiva and the Vaishnava. They were obviously composed to extol their own peculiar gods and their cult, to the detriment of those of their opponents. The great Saka emperors of India were worshippers of both Buddha and Siva, as their coins show. They were strictly Buddhists, who were worshippers of Siva. The worship of the Dhyani Buddhas and Bodhisatvas were introduced a little before this time and were made popular by them. The Bodhisatva Avalokiteswara the god looking down or the god who became manifest and saved men in their difficulties and dangers, and the dread varieties of gods, who were guardians of the Dharma of Buddha, became, in the Hindu Tantras, Siva and the Bhairavas. The Prajna Paramita, or the wisdom infinite of Buddha was symbolized by the goddess Tara and Nila Saraswati, both of whom became Hindu deities She too had her dread varieties both among Hindus and Buddhists, who became objects of popular worship, because they were supposed to give health and wealth and to destroy the enemies of their worshippers. The worshippers of Siva and the worshippers of Vishnu known as the Bhagabatas despised by the Sivaites, existed before the time of Buddha. When the northern Buddhists under the Sakas accepted Siva, as a Bodhisatva and made him popular, the Bhagabatas also succeeded in having Vishnu. recognized as a Boddhisatva. Manjusri and Padma Sambhava were varieties of Vishnu. Some claimed Avalokiteswara also as Vishnu. Buddha himself was made the ninth incarnation of Vishnu in the Vaishnava Puranas. The Saivas claimed Manjusri and all Boddhisatvas as varieties of Siva We find that the contest was long and bitter and it is exemplified in all the Puranas and the Smritis. Atri condemns the Bhagabatas and Ushana the Pasupatas. Every attempt was made to convert the reigning monarchs to the respective creeds of the writers. The Harita Smriti is addressed to a king (राजेन्द्र) who apparently was a worshipper of Narasinha and was probably one of the great Deccan kings This contest was the direct cause of the numerous Puranas and Smritis composed during the period between B. C. 300 and A. D. 800. Samudra Gupta the greatest emperor of ancient India after Asoka, though a disciple of the great Buddhist teacher Basubandhu, was a worshipper of Vishnu as his coins show. It was at the courts of the Guptas, of Rudradaman of Ujjayini, of Harsha and of Hala the Andhra, of Satkarni and of Pulumayi, who posed as the champion of Hinduism and Buddhism against the casteless foreign settlers, that the best of Sanskrit literature was produced. These kings were both Buddhists and Hindus. The period between 300 B. C. to 700 A. D. was surely the most glorious period in the political history of India. It was also the golden age of Sanskrit literature when the mellifluous Sanskrit of Kalidasa and Bhavabhuti was developed from the archaic Vedic Sanskrit.

The great kings passed away and with them the glory of India. They were succeeded by numerous princes who divided India into numberless principalities and made her an easy prey to the Islamic invaders. The Arabs conquered Sind in A. D 712 and from that time till the final subjugation of northern India in 1195 there was a constant and terrific struggle between the Hindus and the followers of Islam. It was during this period that the great commentaries were written.

The first great commentator we know, who is sometimes erroneously spoken of by later commentators as identical with Medhatithi, was Asahaya. Nothing is known of him. He wrote the famous commentary of the not very orthodox Narada Smriti. He describes very vividly the proceedings of a law suit at Pataliputra It is clear that Pataliputra was at his time a living capital. We know that after the time of the Guptas, Pataliputra was deserted. Only for a short time between 800 and 864 A. D. it became the capital of northern India. Its glories were revived by the great Bengal Pala king Dharma Pal, who conquered northern India and made Pataliputra his capital and restored for a short period its old glory Ashahaya speaks affectionately of it as Sri Pataliputra and the term could only be applied to a living capital town. He also speaks of the Thakkuras, a term common only in Bengal and Mithila It is thus pretty certain that Asahaya flourished during this period and probably in the court of Dharmapala, the last Buddhist emperor of Northern India, who certainly reigned in 810 A.D. at Pataliputra, which again sinks into oblivion after the time of the Palas. The first great commentator was thus probably a Bengalee But nothing certain is known about him excepting the facts mentioned above. His commentary was preserved for a time by a Tikakara, Kalyanabhatta. But it is Dr. Jolly who has after many centuries of oblivion revived his memory by recovering fragments of his commentary from Nepal and by publishing it.

The centre of political power in India seems to have shifted to Kashmir about the end of the ninth century. Jayapida or Vinayaditya king of Kashmir, extended his conquests up to Bengal. His successor Avantivarman was also a great king. Medhatithi, is supposed to have been an inhabitant of Kashmir, who flourished in the 9th century. All that he says of himself is that he was the son of Bhatta Virasmamin. His repeated mention of Kashmir and his intimate knowledge of that country and its institutions make it quite clear that he flourished there probably in the courts of great Kashmir kings, whose supremacy alone could have given the authority to his book, which it possesses up to the present day. It was probably in the court of Avantivarman who was a great patron of learning and who regned about 855 A. D., that he flourished.

Of Visvarupa we know nothing beyond the fact that he was the earliest commentator of Yajnavalkya Smriti. He is supposed

to have preceded Medhatithi. I have inserted his commentary basing it on the copy of it published at Madras. I find however that it does not agree with the quotations of it by Vijnaneswara and Gimutavahana. It is thus not authentic The charm of Visvarupa's name being connected with the book has made me publish it. Visvarupa was in all probablity a Deccan commentator who flourished in the court of some of the great early Chalukya kings. The first great emperor of that dynasty was Pulakesin II. who reigned at Vatapi, the modern Badami He defeated Harsha in A. D. 620 and his fame extended up to Persia with which country he kept up political relations. I mention this as it may explain how Yajnavalkya Smriti came to enjoy the paramount position it enjoys now It probably acquired, that position during the time of the great Chalukya emperors of Vatapi, in the court of one of whom probably, Visvarupa enjoyed a position of preeminence as lawyer Vijnaneswara only perfected his work.

Vijnaneswara was the prime minister of Vikramaditya VI. or Vikramanka, the hero of Vilhana's poem, the great emperor of the later Chalukya dynasty, who reigned at Kalyanpur the modern Kalyan from 1076 to 1126 A. D. With the ascetic Vijnaneswara as his minister, Vikramiditya conquered a great part of Deccan, Malwa and Northern India Vijnaneswara was a person pre-eminent by his position as the minister of the greatest of the Indian kings of his time and by his unrivalled learning and piety. His commentary on Yajnavalkya was during his time the law of a large part of India and in time became the law of the whole of India. His pre-eminence as a learned ascetic enabled him to overrule the great commentaries of Visvarupa and of Bhoja, the famous King of Dhara, and to establish the heritable right of the widow and the daughter not made Putrika, which had been denied by Smriti writers and the commentators who preceded him. Vijnaneswara certainly deserved the fame which he enjoys to the present day as the greatest and the most authoritative of the commentatois of India.

Vijnaneswara was the son of Bhatta Padmanabha of Bharadvaja Gotra. He became an ascetic and was known as Vijnana Yogee. Probably Vijnaneswara was the name assumed by him on his renouncing the world. He expressed the hope at the end of his book that the fame of his great master, of his splendid city and of himself—of these three—might last till eternity. The great king and his city have passed into oblivion , only the Mitakshara remains to remind the world of their glory.*

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* At the end of the Mitakshara this passage appears.

नासीदस्ति भविष्यति क्षितितले कल्याणकल्पपुरं
नो दृष्टः श्रुत एव वा क्षितिपतिः श्रीविक्रमार्कोपम. ।

I should have mentioned Bhoja before Vjnaneswara, as he preceded him in point of time. Bhoja Paramara is famous in Indian history and literature. He reigned gloriously for 40 years from 1018 A. D. at Dhara over a great part of northern India, and he was one of those kings who had to bear the brunt of the invasions of Mahmud of Ghazni He repelled one of the armies of the great Ghaznavite and freed Malwa from the fear of the Moslem. But he was defeated and killed in battle by a confederacy of the kings of Gujerat and Chedi. His name however, has become famous in Indian popular legend In law he is remembered as the king who is supposed to have convoked an assembly of Smarta Pundits to make the first authentic digest of law, which is lost. He was one of the most learned of the kings of the world and wrote the commentary on law known after his name He is quoted by every commentator as Dhareswara. His law would have been the law of northern India were it not for the fact that his empire passed away and the Chalukyas, who were defeated by his uncle Munja the learned and poetic king of Dhara, obtained the paramount power under Vikramaditya VI. mentioned above.

The paramount authority of the Mitakshara may to some extent be explained by the predominant position held throughout India by the great Chalukya emperors who claimed to be descended from a Rajput clan, which had emigrated from Oude The father of the great Malwa king Bhoja was taken prisoner by the Chalukya king Saila, and Someswara the father of Vikramaditya VI. occupied Chola about 1050 A. D. On the destruction of Dhara in 1060, the great Sanskrit College of Bhoja came to an end and it is pretty certain that the centre of Sanskrit learning shifted from Dhara to Kalyana. Thus it becomes clear how the great work of Vijnaneswara became of paramount authority in India.

We now come to another chapter of Indian history. There were few Jaina kings of India We now know there was one great king who was a Jaina. He was Kumar Pala Deva, the Chalukya king of Gujerat (1150-1200 A D.) His Guru was Hemchandra the great Jaina author, who was spoken of as कलिकालसर्वज्ञः and who wrote the famous lexicon that goes after his name, and among his many books composed also the

विज्ञानेश्वरपण्डितो न भजते किञ्चान्योपमा
आकल्पं स्थिरमस्तु कल्पलतिकाकल्पं तदेतत् त्रयम्।
आसेतोः कीर्तिराशेः रघुकुलतिलकस्याच शैलाधिराजा
दाच प्रत्यक् पयोधिस्फुरदतिमिकुलोत्तुङ्गरिङ्गत्तरङ्गात्।
आच प्राचः समुद्रादखिलनृपशिरोरत्नभाभासुराङ्घ्रिः।
पायादाचन्द्रतारं जगदिदमखिलं विक्रमादित्यः देवः।

Laghu Ahrannıtı Shastra embodying the law applicable to Jainas That is the only book on Jaina Law we have got It had been forgotten till it was lately published in Bombay It is translated by me for the first time Beyond his many works we know little of this great Jaina savant, except that he was born at Dhundika in Ahmedabad in 1088 A D and died in 1172 A D

We next find a royal author Aparaditya, who ruled over a large part of the Konkan about the end of the twelfth century His book, the Apararka, which was of authority in that part of the country ought to have been considered as still of authori y there but it was unknown when the English courts were established and was therefore ignored By a romantic episode in history however, h s book was preserved in Kashmir and became of authority there Aparaditya sent an embassy to the court of Kashmir, a fact recorded in the Srikantha Charita written about 1140 A D His book was probably carried to that country by some Smarta Brahmins attached to the embassy and was accepted as of authority by the king Aparapiditya has been forgotten in his own country We know nothing about his family, except what his book furnishes He is described of the race of Vidyadhara and the son of Gimutavahana of the Silahara kings of Southern India From this, the Parihala Brahmin of Bengal, the author of the Dayabhaga, was described as the great Silahar king, the father of Aparaditya, by the early writers on Hindu Law * It appears that the kingdom of the Silaharas was destroyed shortly after by the Yadavas in 1205 A D

I ought to mention here Hara Datta the writer of the Ujjvala commentary on Apastamba Beyond the fact that he was the son of Rudrakumara and brother of Agnikumara, we know nothing of his life He was probably an early commentator who flourished in the court of some south Indian king

North west India was at this time the scene of the great struggle for supremacy between the Afghans and the Hindus Sabaktigin king of Ghazni first invaded India in 986 A D Jaipal king of Bhatinda near Lahore opposed the invader but was defeated The Hindus of Northern India awoke to the coming danger and combined Ganda, the famous Chandel king, and Rajyapala the king of Kanauj and numerous other princes joined their forces It is said Hindu women cut off their hair to furnish bow strings and gave up their ornaments to supply the wants of the national army But the fates were against the Hindus Sabaktigin defeated them near the Kurrum valley in one of the most terrific battles in history in a blizzard in which blinded by the falling snow the elephants of the Hindu kings ran amok The Muhammadans attributed their victory to divine interposition This disastrous battle took place in 997 A D,

* There is a grant by Aparaditya which is dated, 1181 A D

and practically sealed the doom of the Hindus. Jaipal survived to fight another battle with the famous. Sultan Mahmud in 1001 but being defeated, in the keen sense of his disgrace and disappointment, he ascended the funeral pyre, making his son Ananga Pal king in his stead. The Punjab soon aftter passed into Muhammadan hands Sultan Mahmud's incursions are well-known He plundered Kanauj in 1019. The kingdom of Chandel king Ganda was also invaded. But the actual territory in the possession of the Muhammadans did not extend beyond the Punjab. The Palas weakened by these defeats were soon after conquered by the Gaharwar kings who were subsequently erroneously known as Rahtores These Gaharwars or Rahtores became the paramount sovereigns of Northern India Govinda Chandra Deb was the greatest of them. He was the king of Benares and of Kanauj from 1104 to 1155 A D. His chief minister for war and peace, as he is described, was the learned. Bhatta Lakshmidhara son of Bhatta Hridaya. He was probably a Bhatta of Benares and was undoubtedly the foremost among the Pandits of a time when there was a great revival of Sanskrit learning. He wrote the Kritya Kalpataru, which was also called Kritya Kalpadruma by the Mithila writers and which is better known as the Kalpataru. That book was of paramount authority in Northern India till it was conquered by the Muhammadans Govinda Chandra and his great minister for war and peace kept the Muhammadans at bay for 50 years Govinda Chan dra's grand son Jayachandra was not so fortunate. His paramount authority was questioned by the heroic Prithviraj. Thus weakened they both fell an easy prey Sahabuddin Ghori met the huge army of Jayachandra at Chandawar in 1195 A D, and defeated it, Jayachandra himself being killed heroically fighting to the last Kanauj which was then the most magnificent city in the East, as described by the Muhammadans, was plundered and destroyed and the glory of the Hindus passed away with it * The Gaharwars, who now call themselves Rahtores, emigrated to the deserts of Marwar and founded the principality of Yodhpore, which has some how maintained its existence up to the present day

Lukshmidhara's great book was submerged in the deluge and would have been completely lost, if it were not taken with them by the Brahmins who fled from Benares to the court of the kings of Mithila, who preserved their independence for 200 years more. We thus find the book mentioned as the Kalpadruma by Chandeswara in the 14th century. From Mithila the book was taken to Bengal where it was constantly cited But at present it is practically unavailable There is only one rather corrupt copy

* The myth of Delhi being the capital of India at this time and Prithvi Raj as being the paramount prince has been destroyed by the investigations of modern historians.

of it in India and that is in the library of the Asiatic Society of Bengal. I had a copy made of it and have translated the portion of it dealing with the laws of succession and partition. Poor Lukshmidhara and his master the great king Govinda Chandra Deva who for 50 years kept back the Mahammadans, have been completely forgotten It is hoped that the publication of this volume will revive the memories of these bulwarks of Hinduism for sometime.

After the sack of Kanauj and Benares, the Mahammadan deluge rolled on and overwhelmed Bengal in 1199. We go now to those sad times. Halayudha Misra, son of Dhananjaya Misra was the chief justice of Lakshana Sena, the last independent king of Bengal. He and his brothers Pasupati and Ishana, were, the real rulers of Bengal.Lakshana Sena waa a great patron of poets and learned men Halayudha was the most learned man of his time. He wrote a commentary on the Vedas, two hundred years before Sayana, and made the boast still repeated by Bengal Pundits that they never read without understanding and would not commit to memory only as did the Pundits of the other Provinces. He settled the rule of conduct for the Brahmins of Bengal by his famous book called the Brahmana Sarvasva. He also settled the positive law for Bengal, which he administered, by writing his famous commentary, which is now lost It was of paramount authority in Bengal and Mithila till the fourteenth century and largely quoted by the later commentators. We now know from these quotations that the Hindu law of Bengal till the fourteenth century was identical with the law of Mithila, which, on account of its being under independent Hindu kings, who were great patrons of learning, was the centre of learning for the Brahmins of both Bengal and Mithila.

As long as Halayudha lived probably, there was no Muhammadan invasion but there was no adequate preparation to meet the danger. When the storm burst on Bengal, Lakshana Sena and his ministers Pasupati and Ishana were taken by surprise and gave up western Bengal without striking a blow in self-defence. There was at the time a great revival of learning. Lakshana Sena and his ministers beguiled their time in the pursuit of learning and in the company of poets and found to their cost that learning was not sufficient to meet military valour. We cannot absolve Halayudha of all blame. But there he was, the most learned and the most saintly of all Bengalees, next to the great Buddhist writer and saint Santideva. He, the purest of Brahmins, forgot that his ancestor Vasista was the organizer of the victories of Sudasha the Aryan conqueror of India, and he spent his time merely in study and *japa* and *tapa*. He was the great exemplar of all Brahmins and attempted to follow the Shastras in their entirety and the saying is current that others were incapable of following the Shastras and only Halayudha was able. One can not help loving the ascetic and austere Brahmin,

who in his misguided enthusiasm, followed the old obsolete Shastras as divine dispensations and left off his high position and calmly entered the burning pyre to illustrate by his life and by his death the Shastras he loved. I have mentioned Lakshmidhara and Halayudha together as they were the leaders of the Hindu revival in the twelfth century and the full brunt of the Muhammadan invasion fell on their shoulders. Their books were swept away in the Islamic deluge. The Kalpataru and Halayudha's Smritis however retained their positions as authorities in Mithila for two centuries more and were largely quoted. It is the keenest regret to me that I have not been able to procure a copy of Halayudha's Smriti. The ample quotations contained in this volume are however, a poor though some compensation.

How the saddest of all human histories, namely the history of the Hindus, is mixed up with the great commentators is exemplified in the case of Chandeswara Thakkura. Even after their conquest of the whole of northern India, Mithila was left undisturbed by the Muhammadans for 130 years and continued to be the refuge of Hindus and Hindu Pandits and was the centre of Hindu learning. Sultan Ghyasuddin, the Subadar of Bengal, under Sultan Altmash is said to have once exacted tribute from the king of Mithila, Nara Sinha Deva about 1212. But for four generations after him the kings of Mithila were independent powerful monarchs. Hara Sinha Deva was the last and the greatest of these kings. His prime minister and chief justice was Chandeswara Thakkura, whose father Viresvara Thakkura was also prime minister before him He led an expedition on behalf of this master to Nepal and conquered that kingdom. In commemoration of the event, he performed the religious ceremony of the Tula on the banks of the river Bagbati in 1315 A D, in which he had his own weight of gold distributed to learned Brahmins * From the above it appears that his family was like the family of the present all-powerful prime-ministers of Nepal and he assumed very nearly regal powers He was one of the most learned Brahmins of his time and wrote seven digests on religious ceremonies and law, each of which was called Ratnakara or ocean, on account of its comprehensiveness He mentions Halayudha's Smriti, the Kalpadruma the Prakasha and the Parijata as books of authority. This great minister and his master however, after a brief period of great glory came to a sad end. The emperor Ghyashddin Tuglak of Delhi attacked Tirhut and defeated Hara Sinha Deva in 1324 A D, and annexed his kingdom. The Panji historian of Mithila thus describes the event; "In 1245 Saka year on

* श्रीचण्डेश्वरमन्त्रिणा मतिमानेन प्रसन्नात्मना ।
नेपालाखिलभूमिपालजयिना धर्मेन्दुदुग्धाब्धिना ।

Saturday in the ninth day of the light half of the month of Pousha, Hara Sinha Deva left his beautiful city and entered the hills pointed out to him by adverse fate."* Tragic indeed was the fate of Hindu kings and their great ministers at this period. Let us go again to Southern India and its commentators

The story of Hemadri and his master Ramchandra is equally sad. The Yadava kings of Devagiri, now known as Daulatabad, became very powerful in the Deccan in the beginning of the thirteenth century. Their kingdom was as extensive as that of the Chalukya emperors.

Hemadri was the prime minister of king Mahadeva and his successor Ramchandra and administered their wide domains in great splendour and with great glory. † The court of Devagiri was a resort of learned men, among whom Hemadri or Hemadpanth was the greatest. His encyclopædic work, the Chaturvarga Chintamani, has been published in parts by the Asiatic Society of Bengal. The portion about positive law however is not available.

The Yadavas kings of Deccan had escaped the attentions of the Muhammadans for a hundred years. But the ambitious Sultan Alauddin resolved to conquer the southern peninsula. He and his great general, Malik Kafar, for a time, carried the flag of Islam from the Vindhya mountains to cape Comorin. In 1294 A. D. Ramchandra was obliged to surrender to Alauddin and was allowed to keep up a miserable existence. Malik Kafur again invaded his territories in 1309 and the Yadavas passed into oblivion. What was the end of Ramchandra and his great minister is unknown Like Harasinha Deva and Chandeswara, they entered into the dark regions pointed out by adverse fate. Hemadri's book shared the fate of his king and was forgotten till recent times. Now, it is his book, which alone gives us the history of the great Yadava kings and of their great city, Devagiri, and reminds us of their glory.

We have now to consider when did Devanna Bhatta flourish ? All that we know of him is that he was the son of Keshavaditya Bhatta and that he quoted Apararka and the Mitakshara and was quoted in the Parasara Madhava and in the Saraswati Vilasha. Thus he lived many years after 1187 A. D. and many years before 1370 A. D. Commentators generally do not quote

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* बाणाब्धियुग्मशशिसम्मिते शाकवर्षे ।
पौषस्य शुक्लनवमी रविसूनुवारे ।
त्यक्त्वा सुपट्टनपुरीं हरसिंहदेवो ।
दुर्दैवदर्शितपथोत्थगिरि प्रवेश ॥

† He describes himself in his book as the chief Secretary of King Mahadeva : समस्तकरणाधीश्वर: सकलविद्याविशारद:

other commentators unless three generations have passed after them Ordinarily therefore, the Smriti Chandrika may be considered to have been written probably between the years 1247 and 1300 The Chola kings were the paramount lords of Southern India from the time of Raja Raja the Great. Rajendra Chola Deva I. was master of the whole of Southern India, the islands in the Bay of Bengal, Ceylon and of Pegu and Martaban in Burma. He conquered Kalinga and Western Bengal up to the Ganges and assumed the proud title of Gangai-Konda He died in 1035 A. D. His son Rajadhiraj was killed in battle with the Chalukya King Someswara, the father of Vikramanka the patron of Vijnaneswara. Vira Rajendra the grandson of Rajendra Chola took the side of Vikramanka and helped him to obtain the throne of Kalyanpore and gave him his daughter in marriage. Vikramanka in his turn in 1072 helped his brother-in-law Adhirajendra in obtaining the Chola throne of Tanjore in the civil war that followed the death of Vira Rajendra. Adhirajendra was succeeded by Kulottunga I. who was the son of the eastern Chalukya King of Vengi and daughter's son of Rajendra Chola Deva. He reconquered Kalinga and probably extended his dominions to Bengal by defeating Anantavarman Choregunga the king of Kalinga, one of whose officers founded the Sena dynasty of Bengal. He reigned from 1076 to 1118. The close connection with the kings of Kalyanpore and the fact that this prince was himself a Chalukya explains how the great work of Mitakshara came to be regarded as a leading authority in the Madras Presidency. Vikram Chola the son of Kulluttunga who ascended the throne in 1118 maintained the predominant position of the Cholas and his exploits have been celebrated in a famous Tamil poem. The last powerful Chola king was Kulluttunga III, who ascended the throne in 1287. There was a great revival of learning during this period which preceded the Muhammadan conquest Devannabhatta without doubt lived at some time during the reigns of Vikrama Chola and his successors. It is not improbable that he flourished in the court of Kulluttunga III who reigned from 1287 to 1310 and saw his master and his kingdom overwhelmed by Malik Kafur in 1310 A. D * His quoting the Mitakshara and the Aparарка is easily explained by the intimate connection of these later Chola Kings with the kings of Kalyanpur and of the Konkan, as mentioned above. It is also intelligible on this hypothesis how

* There was three other powe ful kings in the south during this period. Vira Valala and Narasinha II the great Hoysala kings of Halbeid woh ruled from 1173 to 1240 A. D. and Jatavarman Sundara, the Pandya King of Madura, who reigned from 1251 to 1271. But the fact that the Smriti Chandrika was of authority in Orissa and is quoted by the Bengal authors can only be explained that it was composed in the court of the Chola conquerors of Orissa and Western Bengal. All these kings were destroyed by Malik Kafur and Devanna Bhatta probably saw the end of all of them.

the Smriti Chandrika was considered of authority in Orissa and was quoted by Bengal authors.

The Pathan empire of Delhi disintegrated shortly after the death of Alauddin. Southern India was too far away from Delhi for effective control There was confusion even in the provinces round Delhi. Taking advantage of this confusion, the Hindus of Southern India expelled the Muhammadans and regained their independence. The story of the founding of the kingdom of Vijayanagar in 1336 A. D. is one of the most romantic episodes in the history of the world.

How two brothers Hukka Raya and Bukka Raya of the family of Sangama princes of the lunar race and rulers of a small principality were raised, from their low estate about the year 1336 A D to the throne of the greatest of the kingdoms of India since the time of the Andhras, by a learned Brahmin named Madhava is described in all histories of India. Madhava describes himself as the son of Mayana of the race of Bharadvaja and says that he had two brothers Sayana and Bhogoraja and that he was the family Guru of the great king Bukka Roy. Sayana was like another Vyasa who practically restored the, Vedas which had been forgotton and become unintelligble to modern Indians, by collecting and publishing them and by writing a commentary on them in modern Sanskrit. But for his commentary, the Vedas would have remained unintelligble. Madhava was the prime minister of Bukka Roy and Harihar and administered the great kingdom of Vijayanagar and raised it to its great eminence. Madhava is also known as Vidyaranya Swami. He is said to have become an ascetic of the order of Sankara and to have occupied his seat at Sringeri His name appears in the list of the superiors, who style themselves as Jagat Gurus or teachers of the world, as having administered that great religious institution from 1380 to 1386 A. D. He wrote many books on philosophy and law, all of which are considered of paramount authority in India. There is no other instance in history of an author like him, who was equally distinguished for learning, statesmanship and saintliness.

Bukka Raya, of whose empire Madhava describes himself as the guiding chief minister (धुरन्धर:) reigned from 1354 to 1377 A. D. The Parasara Madhava was composed during this period and was immediately accepted as of paramount authority on the subjects dealt with in it. Strange as it may seem his book is not now of paramount authority in Madras, because the great Madhava was not well-known to the Madras court pundits of the Sudder Court, to whom the Smriti Chandrika seemed of greater authority, and because the Smriti Chandrika was early translated into English.

It should be mentioned here that some historians allege that the family raised to empire by Madhava was shortly after his

death exterminated and a new dynasty took its place. Others however say that it lasted till 1478, when it was supplanted by the great kings of the line of Narasinha The kingdom was finally destroyed by a confedracy of the Muhammadan kings of the Deccan at the disastrous battle of Talikota in 1565 A.D and the Hindu culture and learning of the south vanished and the great book of Madhava was forgotten

Let us go back to Northern India. By the time of Alauddin Khilji the flood of Islam had swept over and submerged the whole of India excepting Orissa. All literary activity was at a stand still during this period and even Manu's great book was lost. It was preserved from oblivion by Bissessara Bhatta who was the court Pundit of Madana Pala, king of the small principality of Kasta in the neighbourhood of Delhi. We know little of this king and his kingdom He is mentioned in the Madana Benode Nighantu as having reigned in 1375 A. D.* His name however shall always remain memorable as the prince under whose patronage Bissesswara Bhatta, son of Peti Bhatta, revived the study of Hindu Law by restoring Manu's book with the all but forgotten commentary of Medhatithi. It was also he, who restored to Hindus the great commentary of the Mitakshara and wrote his famous Subodhini Tika of it The books Madana Parijata and Madana Ratna were also written under the patronage of this prince

Vachaspati Misra, the author of the Vivada Chintamani must not be mistaken for the great philosopher of that name who wrote commentaries on all the Darsanas and who wrote his Nyaya Suchi Nivadda in 898 Saka The author of the Vivada Chintamani was the most learned Smarta Pundit of his time He wrote several well-known books on Smriti, all having names ending with the word Chintamani. In his Sraddha Chintamani he says that the book was written by order of queen Jaya Devi, widow of king Bhairava Deva and mother of king Purusottam Deva. Bhairava Deva is identical with Hari Narayan Dev of the royal family of Mithila founded by Kameswar Jha, a Brahmin belonging to the court of Hara Sinha Deva, after the defeat of that great king described above. Colebrooke writing in 1796 says that the descendants of Vachaspati Misra were at that time living at Simaul and that not more than 10 or 12 generations had passed since he flourished there. He therefore surmised that that author lived 400 years ago *i.e* about 1396 A. D. Prosonno Kumar Tagore says that he flourished about 1423 A.D. We know however now the date of king Harinarayan. He reigned from 1513 to 1527 A D The Vivada Chintamani was

* Vissvesvar Bhatta quotes the Apararka and the Smriti Chandrika. His date can not therefore be 1175, as supposed by some writers who were

written at this period during the reign of this king. This king also was defeated and killed in battle by Nasrat Shah, the Pathan king of Bengal, in 1527 A. D. and the dynasty practically came to an end with him, though his son and grandson were allowed to remain as titulary Rajas for a few years more.

We now come to Orissa and Bengal which are very closely connected, a fact lost sight of by present day administrators. King Purusottam of Orissa of the Gajapati race was a great conquering king whose territories extended from Madras to Midnapore and who restored the great temple of Jagannath to its former splendour He married Padmavati or Rupamvica the daughter of the king of Kanchi which he conquered.* Pratapa Rudra was the son born of this union. He became king in 1503 A.D., and was a mighty prince like his father and maintained his power, though surrounded by powerful warring kingdoms. He married the daughter of Krishna Raya, the great king of Vijayanagar in 1516 A.D.* He was a very learned man himself and a great patron of learning. Bengalees, who affect to despise Ooriyas, forget the great debt they owe to them The court of Pratapa Rudra Deva was the refuge of the good and learned men of Bengal of the time. The great Vasudeva Sarvabhouma, who revived the study of Nyaya in Bengal, and Chaitanya, the greatest reformer and saint of Bengal, had rest in his court It was from the court of Orissa that learning was taken to Navadvipa by the Pundits and the Vaishnava pilgrims, who flocked to Puri in thousands every year

Pratapa Rudra Deva called an assembly of Smarta Pandits over which he himself presided The Sarasvati Vilasha was compiled by that learned committee, as is mentioned in that book † It was written sometimes between 1503 to 1520 A D. Pratapa Rudra Deva died in 1524 A. D. By a strange fatality, which has accompanied the compiltion of Hindu law books, his family and dynasty were exterminated shortly after his death. The Sarasvati Vilasha was practically lost, till the Rev. Mr. Foulkes published it in 1881. A.D. Since then there has been no other edition of it and it is now available with difficulty.

The origin and development of the present Bengal School of law is described in the introduction to the first volume. It is clear that it is the old Hindu Law modified by Muhammadan ideas of individual property Bengal became for a short time independent under a Hindu king Ganesha about 1386 A. D.

† In the colophon and in the introductory chapter of the book, a genealogy of the author and a description of his capital Kataka Nagari on the Mahanadi is given. The error of mistaking him for Pratap Rudra of Warrangal has been completely dispelled by Mr. Foulkes.

His son became Muhammadan and assumed the title of Jalaluddin (1392-1409 A. D.), but he was a great patron of Sanskrit learning. Srikara and Raya Mukuta, who wrote a commentary on the Amarakosha, flourished in his court and it is possible that Gimutavahana, a Parihala Brahmin, also wrote his great commentary, the Dayabhaga, under his patronage.

There are certain Bengal writers who have not been able to shake off altogether the old idea that Gimutavahana was anterior to Vijnaneswara and was a great king. They say from a statement made in his book on Kala that a certain eclipse was seen at a certain year and that he must have existed at that year. But they forget that he clearly attempted to refute the opinion of Chandeswara in Ch. II Sec. 27 The ancient commentator Achyuta and also Srikrishna specifically say that he there refutes Chandeswara. An ordinary man would prefer to be guided by the opinion of these ancient commentators and by common sense than by these Pundits, who, however learned, had never an opportunity of studying the commentaries of other parts of India.

Kulluka Bhatta also probably flourished during the time of the revival of Sanskrit learing in Bengal during the reign of the short-lived dynasty founded by Raja Ganesh He describes himself as the son of Bhatta Divakara of the race of Varendra Brahmins* He was a very learned man residing at Benares. His commentary on Manu is, unlike the Dayabhaga, of authority throughout India. He makes no mention of the opinion of Gimutavahana and probably preceded him

Of the other Bengal commentators, Shulapani is considered as the most ancient, among them. We know nothing about him except his books He mentions the Durga Puja, Dole and Rasha, which are specially celebrated in Bengal He wrote a commentary on Yajnavalkya Smriti and his opinions were opposed to those of Gimutavahana, whom he does not mention.

The most famous of modern Bengal commentators was certainly Raghunandana, known as the Smarta Bhattacharya. He was the son of Harihar Bando or Bandpadhyaya, who was also a famous writer. One of his books the Jyotistatwa was written in Saka 1489 *i e* 1567 A. D. He was a pupil of Srinath Acharya Churamani His authority on all subjects of law and ceremonials is regarded as supreme by all Bengal Pundits His commentary on law is named the Dayatatwa.

We now come across a Benares Pundit, Mitra Misra, who was the court Pundit of the notorious Vira Sinha. Raja of Archa, who at the instigation of Prince Salim murdered the learned Abul Fazl, the friend and minister of Akbar, who was a

* गौरे नन्दनवासिनाम्नि सुजनैर्वन्द्ये वरेन्द्रकुले ।
श्रीमद्भट्टदिवाकरस्य तनयः कुल्लूकभट्टोऽभवत् ॥

great patron of Sanskrit learning, about the end of the sixteenth century. His book, the Viramitrodaya, named after himself and his patron, is still considered of value in the Benares School.

We next come to the great Bhattas of Maharashtra, who had settled in Benares and who styled themselves as the teachers of all Hindu India. Some of them were described as Jagat Guru. However that may be, they kept the torch of learning burning during a period of great difficulty, when the oppressions of the fanatical Aurangzeb were at their worst We do not know who the great Bhattoji Dikhshita was. He was one of the most erudite Brahmins of modern times. His commentary on Panini is still a standard work His commentaries on the Smritis are practically lost but were considered of great authority during his time. He was a disciple of Bhatta Sankara, the father of Bhatta Nilkantha. This Bhatta Nilkantha was the Smarta of the court of Bhagavanta Roy, king of Bundelkhand, who had attained to some independence about the beginning of the 17th century. He wrote on every possible subject of the Smritis and called his book after his patron as Bhagvanta Bhaskara or the sun of Bhagvanta. The different treatises were called its rays or Mayukhas. Vyavahara Mayukha was one of them. On account of the influence of king Bhagvanta and on account of the influence of the great Bhatta family, the book came to be considered as of supreme authority in the Bombay Presidency. It was written about 1600 A D. Another great Bhatta was Bhatta Kamalakara, who was a cousin of Nilkantha. He wrote the Vivada Tandava and the Nirnaya Sindhu which was completed in 1612 A. D.

Another writer was Nanda Pandit, who was also known as Vinayeka Pandit. He was the court Pandit of another prince Keshava Nayaka. He wrote the Dattaka Mimansa and the Keshava Vaijayanti, a commentary on Vishnu which he named after his patron, who would have no reason to be remembered except for the book. These books were composed about 1633 A.D.

We have one female commentator Lakshmi Devi, who wrote the Balam Bhatta Tika of the Mitakshara There is a tradition in Benares that the real author was not a female. But let us believe that there was a Hindu female learned enough to write this famous commentary.

Srikrishna Tarkalankara, the celebrated commentator of the Dayabhaga and the author of the Dayakrama Sangraha, was an inhabitant of the district of Maldah, who emigrated to Navadvipa about the middle of the eighteenth century. Colebrooke says that one of his daughter's sons was living in 1806.

We next come to British times Warren Hasting had a digest of Hindu Law made by Pundits selected from all parts of

Bengal.* That was first translated into Persian and the Persian translation was again translated into *English* by Mr. Halhed, a member of the Civil Service. The book is known as Halhed's Gentoo Code. It was printed and published in London in 1775. Mr. Halhed says in his preface that it was believed the Hindus had books only on ceremonial law and none on positive law. Mr. Halhed also wrote a Bengalee grammar and printed it at Hugli in 1778, at the first printing press established in India. We next come to the illustrious Sir William Jones, who was a Judge of the Supreme Court of Calcutta. Among his many works is his translation of the Institutes of Manu which was published in 1794. Next comes Mr. Henry Thomas Colebrooke, who became a Judge of the Sudder Court and afterwards a member of the Supreme Council and of the Board of Revenue (1817). While posted at Ghazipore, he made the translation of the digest Vivada Bhangarnava by the famous Pundit Jagarnath Tarkapanchanan. It was published in 1798 under the authority of the Government. Mr. Colebrooke published his translation of the Dayabhaga in 1810 and shortly after, his translation of the Mitakshara. Mr. Colebrooke not only translated the original treatises but his annotations gave a compendium of all the commentators on those books. His books were thus works of rare merit. They are now practically unavailable. Mr. P. M. Wynch made translation of the Dayakrama Sangraha and published it in 1818 Mr. J C. Sutherland, a member of the Bengal Civil Service, while posted at Monghyr, published his translation of the Dattaka Mimansa and the Dattaka Chandrika in 1821. Mr. Borradaile, a member of the Bombay Civil Service, translated the Vyavahara Mayukha His translation was published under the authority of the Government in 1827. The late Mr Mandalika also published a translation of the same book in 1880. The late Prasonno Coomar Tagore, who was pleader of the Calcutta High Court and founded the Tagore Professorship, published his translation of the Vivada Chintamani in 1863. The late Mr. T. Kristnaswamy, who was a principal Sudder Ameen in Madras, published his translation of the Smriti Chandrika in 1867 In recent years, the late Babu Grish Chandra Tarkalankara translated the Vyavahara Adhyaya of the Mitakshara

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* The Sanskrit digest, (copy of the manuscript of which I have seen in the library of the Asiatic Society of Bengal) of which Halhed's Code is a translation, was named the Vivadarnava Setu. The Pundits who prepared it are mentioned at the end of the book. They were Baneswara (Vidyalankara of Triveni), Ram Gopal (or Gopal Nyayalankara of Navadvipa), Kriparam, Krishna Jivan, Bireswara, Krishna Chandra, Gouri Kant, Kali Sunker, Shyam Suxder, Krishna Kishore and Sitaram. The treatise, it appears, was adopted by Ranjit Sing, the great king of the Sikhs, and became the law of the Punjab during the Sikh regime. In 1888, it was printed and published at Benares and the authors were described by the publisher as the Pundits of the court of Ranjit Sing and their names were given as Baleswara, Kriparam, Ram Gopal, Bareswara, Krishna Chandra, Gouri Kant, Kalasunker, Shyam Sundor, Krishna Keshava and Sitaram !

in 1868. Dr. Burnell translated the Madhaviya and the Vyavahara Nirnaya. The Saraswati Vilasha was translated by the Rev. Mr. Foulkes in 1883. The late, Babu Golap Chandra Sircar translated the Vivada Ratnakara the Viramitrodaya and the Dayatatwa. Mr. Sitaram Sastri translated the Vivada Ratnakara, the Madana Parijata and Visvarupa's Commentary I have been obliged to make new translations of these recent publications which had been made since 1864. But the names of the gentlemen, who made those translations, should be gratefully remembered.

I also ought to mention here that the people of India owe a deep debt of gratitude to Dr. Buhler for his translations of Manu, Gautama, Vasista, Baudhayana and Apastamba, and to Dr Jolly for his translations of the Smritis of Narada and Vrihaspati The greater part of the former and the whole of the latter were restored by him and preserved from oblivion by compiling and putting in order the texts from the digests

The unwieldy bulk of the book has prevented me from inserting the minor commentaries in this volume. They will be published in an additional volume. Eighteen principal commentaries have been inserted in this volume. I have retained the translations of the Mitakshara and the Dayabhaga by Colebrooke with his valuable original annotations, and the translation of the Vyavahara Mayukha by Borradaile and also the translation of the Vivada Chintamani by Prosanna Coomar Tagore These have become authoritative. In some instances, even their mistranslations have been accepted as settled law. I have however, revised them and while retaining the original translation have also given the correct translations of those few passages where they are wrong. The translations of the other fourteen treatises are mine. Of these nine treatises are published for the first time. Of the remaining five, there are other translations I would have desired very much to revise and publish those translations and keep alive the memories of the learned men who made them. But unfortunately I could not get the necessary consent However, I must acknowledge my great obligation to those writers, for in making new translations my labours have been considerably lightened by their works. I have tried to avoid the errors of previous translations and if I have failed to do so, with all the criticism and discussion of twenty years on them, I must be considered as having little excuse.

I had to make the translations as well as to revise the proofs myself and as a consequence many errors have crept in. I have to thank my friends Babu Haran Chunder Banerji M. A. B. L and Babu Asutosh Shastri. M.A. B.L. for helping me in making the errata list It is unfortunately a long one.

The labour, the two volumes of my Principles have cost me, has been very great, and I hope my readers will regard the deficiencies of the book with leniency.

ADDENDA

देवस्वं ब्राह्मणस्वं वा लोभेनोपहिनस्ति यः ।
स पापात्मा परे लोके गृध्रोच्छिष्टेन जीवति ॥

मनुः ११ अ २६

यागशीलानां त्रयाणां वर्णानां यद्वित्तं तद्देवस्वं । ब्राह्मणस्यायागशीलस्यापि यत् स्वं तत् ब्राह्मणस्वमिति एवमपि श्लोको गच्छत्येव । अर्थवादश्लोकोऽसौ धनं यज्ञशीलानामिति न चौर्यादिशब्दार्थपरिभाषापरोऽतोऽन्यथा व्याख्यायते देवानुद्दिश्य यागादिक्रियार्थधनं यदुत्सृष्टं तद्देवस्वं मुख्यस्य स्वस्वामिसम्बन्धस्य देवानामसम्भवात् । न हि देवताइच्छया धनं नियुज्यन्ते न च परिपालनव्यापारस्तासां दृश्यते स्वं च लोके तादृशमुच्यते तस्माद्देवोद्देशेन यदुक्तं नेदं मम देवताया इदमिति तद्देवस्वं तच्च दर्शपूर्णमासादियागेष्वग्न्यादि देवताभ्यर्थोदितं शिष्टसमाचारप्रसिद्धेऽत्र गौणोपाय-दुर्गायागादिषु । ननु चतुर्भुजादि प्रतिमासम्बन्धिलोके देवस्वमुच्यते लोकप्रसिद्धश्च शब्दार्थः शास्त्रेगृहीतन्यायः । स्यादेवं यदि देवस्वशब्दोनिर्भोगः प्रसिद्धिमुपेयात् देवानां स्वं देवस्वमित्यवयवप्रसिद्ध्या समुदयार्थः प्रकृष्टो न च वाक्यान्तरकल्पना प्रमाणेनाप्राप्ति मुख्यं चतुर्भुजादिना देवत्व प्रतिमाव्यवहारेणैवापहृतं । न च यद्युक्तलक्षणमस्ति । अथ समाचारतो देवस्व भवतु स्वस्वामिभावस्तावन्नास्ति यथोक्तेन च प्रकारेण स्वव्यवहारोपपत्तिरिति शिष्टं द्वितीये ।

एवं देवस्वदेवपशवोदेवद्रव्यं इत्यादयो व्यवहारा तादर्थ्येन उपकल्पितेषु पश्वादिषु द्रष्टव्याः । दण्डाधिकारेत् प्रतिकृतिविषयम् ... देवता व्यवहारं इच्छन्ति अन्यथा व्यवस्थाभङ्गः स्यात् । कल्पित देवतारूपाणां प्रतिकृतीनां कल्पितेनैव स्वस्वामिभावेन यत्सम्बन्धिदेवब्राह्मणराज्ञां तु द्रव्यं विज्ञेयमुत्तममित्यादिषु देवद्रव्यम् नहि देवतानां स्वस्वामिभावोऽस्ति । मुख्यार्थासम्भवात् गौन एवार्थ. ग्राह्यः ।

That wicked man, who misappropriates god property and Brahmana-property, lives in the next world on the leavings of voltures (Manu XI. 26). The property of persons of the three regenerate tribes, that are in the habit of performing sacrifices, is (to be understood by the term) god-property ; and the property of a Brahmana, who is not in the habit of performing, sacrifices, is Brahmana-property. Even in this manner this, verse may certainly be explained. This Sloka becomes then a laudatory one. For the property of persons habitually performing sacrifices is not the meaning derived from the primary meaning of the words, like the meaning of the term stealing and the like (but a figurative meaning). Hence the term is explained in another manner thus.—Property that is set apart or relinquished for the purpose of sacrifices and the like in honour of gods is god's property, by reason of the impossibility of the application to gods of the primary meaning namely, the relation of property and owner. For the gods do not use the property according to pleasure nor is found their exertion for the protection (of the property) : and property is described to be of that character in popular view. Accordingly, when by referring or

pointing to gods it is stated · this is not mine, this is god's—that is god's property—and that property is enjoined (by the Vedas) for the Fire-god and the like in the Dasapurnamasa sacrifice and the like—(and also enjoined) by the well-known practice of the learned in the Durga-sacrifice and the like secondary means (of attaining spiritual benenfit but not primary in as much as these are not enjoined by the Vedas.) It can not be argued that in popular view (property) relating to the Four-armed or the like image (of god) is called god's property, but it is proper to put popular meaning on words (employed in the Shastras). It would be so, if the term god's-property acquired notoriety (in the sense) undivided (into or without reference to, its component parts—god and property; but) by reason of the notoriety of the component parts namely,—god's property is god-property, the meaning of the whole (as consisting of the meanings of the component parts) is preferable. Nor is there any evidence for inferring another passage for the purpose of supporting the proposed meaning. The assumption that the Four-armed and the like have the status of god in the primary sense is removed by the very use of the (term) image (with it). Nor can it be argued that although there is no god in the primary sense, still let such property be god's property by usage. Be it so, but there can not be the relation of property and owner. The use of the term, property (as god's), may be reconciled in the manner stated (above by us). This is discussed in the second (chapter).

Portion of the Commentary on Manu XI. 26.

It should be noticed that such expressions as property of the gods, animals of the gods, things of the gods &c. mean animals &c., supposed to be intended for the gods &c. In the Section on punishments, the term (देवता) god is desired to be used in the sense of images only, otherwise, there would be an upsetting of established order. In such texts as 'any thing good belonging to the gods, Brahmans and kings should be known &c.' *i e.* a thing belonging to the gods which is connected with an imaginary ownership of the images or likenesses imagined to be gods The gods have no ownership of their own, and so the primary sense being inadmissible here, the secondary sense alone should be accepted." *

Portion of the commentary on Manu II 189.

* The above translations are of Sir A. T. Mukerji to be found in his judgment in Bhupati Smrititirtha's case (37 Cal. 128). Sir A. Mukherji J is certainly right as regards the opinion of Medhatithi. It is clear however that though there were clay images worshipped in Medhatithi's time, he had not much respect for them. The setting up of permanent images had not come into vogue at that early date. Dedicated immoveable property belonging to permanent images of family gods or gods in temples became general long after Medhatithi, who did not deal with ideas connected with such dedications.

CORRIGENDA.

p 8 l. 9. Neyoga should be Niyoga.

p 53. l. 3 Sister should be sister's son. l. 4. he should be omitted

p. 48 l. 19. after rule add (he who takes the wealth of a brother should raise issue to her brother's widow and give the property to the issue)

p 93. l. 26 or should be a
p. 185. l 2 famale should be female
p. 239 heading Mitakshara should be Apararka.
p. 246. l. 36. carreage, should be carriage
p. 249. l 11. shares should be sharers.
l. 21. after expense add for the son. l 22 after which add is.

p. 251. l. 45 'what' should be 'the text of'
p. 253 l. 24. refence should be reference.
p 259 l 26. Pundas should be Pindas.
p 264 l 22. receives should be receive
p 315. Footnote (c) Band should be Baud.

p 329 In Section 1 add "Thus has been declared to you the law based on affection for the conduct of man and wife together with the getting of sons in case of sonlessness Now learn the law of inheritance."

p. 352. l. 9. delivers the son 'should be' 'delivers the father.'
p. 376. Omit footnote. It is wrong.
p. 379 l. 18 the same should be different
l. 29. have should be has

p. 387 In marginal note to Sec. 12 after can add not
p. 486 l 29 omit 'not,' l. 30 omit the rest of the sentence after 'works' and add 'by him are the fathers said to possess a son

p. 487. l 27. Atadgung should be Atadguna
p 489 l. 39. after 'given' add 'by the family', l 41 omit 'not'
p 494 l. 12. after 'and' add 'what has been given'; after 'good' add 'such as rings and the like.'

p. 502. l. 16. for 'afterwards' read 'after attaining the age of sixteen.' l. 27 after 'after' add 'attaining the age of 16'

p. 520. l. 23 Nibanda should be Nibandha.
p. 567. l 3 & 5 'Nirendriya' should be Nirindriya.
p. 586 l. 15. after 'means' insert 'not' and after 'infant' insert 'who is'

p. 627 l 25. after 'daughter; failing her,' insert 'daughter's son' and omit 'her' and substitute 'him.

p. 630. l. 1. After 'take,' insert 'in this connection.'
p. 798. l. 20 'shares' should be 'sharers'
p. 814. l. 6 'print' should be prime'
p. 909 Marginal note—Srikrishna should be Srikara.

p. 907. Annotation 12 should be 13 In the second line of it omit one 'even'

Correct p 21. l. 2 नवय to न्वय:, l. 3 र्ध्वं to र्ध्वं, l. 10 चतां to चतो, l. 11 कैष to कैषां, l. 11 वाड्ता to वक्त्रा, l. 24 ध्यान् to ध्यास्. p 22. l. 17 भेवा to भेवा. p 23. l. 12 दायदे to दायादे, l. 20 कि to किं. p 25. l. 10 गभे to गर्भं, l. 26 पित्र्य' to पित्र्यं. p 26. l. 16 कात्वं to त्वं, l. 15 चर्य्यौ to चार्य्यौ. p 27. l. 1 चाभा to चभा, l. 11 पुत्वा to पुत्त, l. 22 स्वा to स्व, l. 1 ध to द, l. 28 शुल्कस्तो to शुल्कंसो, l. 30 जा to ज. p 30. l. 6 कान्या to कान्यां. p 41. l. 9 सयो to सयो:, l. 15 पदाय to दाय. p 42. l. 1 वर to वर: l. 7 वल to वला. p 44. l. 5 स्वण to स्वर्णं, l. 12 तस्यायो to तस्या चयो. p 58. l. 22 वाह्य to वाह्य. p 59. l. 19 जोचनं to जोवनं, l. 28 तत्यं to पत्यं भ्रौ to भ्रा. p 60 l. 12 निच्छां to निच्छायां, l. 15 शेश्व to शेष, l. 18 च्चिम: to च्चिम:, l. 21 भाक्तं to भाक्तं. p 61. l 7 क्रिका to त्रिका, णो to नो, l. 11 घति to घ्यति, l. 15 नुढा to नूढा. p 62. l. 9 स्तंर to स्तर, l. 11 ह्रयते to क्रियते, l. 14 तास्यु to ता·स्यु. p 63. l. 3 ज्जिंत: to जिंतं. p 64. l. 23 सं to स. p 75. l 8 भुं to भूं. p 78. l. 27 वह्न to वह्न. p 201. l. 1 देत to देन, l. 18 तथै to स्तथै. p 202. l. 1 धान to धन, l. 12 गजन to जन. p 203. l. 10 ग्राह्य to ग्रह्य, l. 28 तथोप to तथोत्. p 204. l. 11 तानु to तान्, l. 27 भ्रमिं to भ्रमिं. p 205. l, 12 v 15 उर्द्ध to ऊर्द्ध. p 206. l. 1 क्रियाम् to क्रिया, l. 10 भाग: to भागे, l. 22 द्यर्द्ध to ध्यर्द्ध. p 207. l. 6 सुवर्ण to सुवर्णं, l 11 धनं to धंनं. p 208. l. 26 च्चित to च्चित्. p 209 l. 21 ताय to ताय. p 210. l 9 त्यक्त to त्युक्त, l. 26 युज्य माणे to युज्यमाने. p 211. l. 1 जिज्ं to ज्जिं, l. 24 धिभागो to विभागो. p 213. l. 4 वच्च to वत्य, l. 19 पूर्व्व to पूर्व्वां. p 214. l. 1 ह्रपा to ह्रपात्, l. 22 पौत्र to पौत्रं. p 215. l. 10 एक to त्रिक, l. 16 दर्शणात् to दर्शनात्, l. 18 वाग to वाग्. p 216. l. 7 व्यधभि to व्यभि. 217 l. 6 गुढ़ा to गूढ़ा, l. 7 वोढ्ु to वोढ़ु, l 26 वोढ्ु: to वोढ़ु. p 218. l. 2 ज्ञाणां to ज्ञानां, l. 10 गुढ़ो to गूढ़ो, l. 22 यड to षड p 219 l. 9 पुर्व्वा to पूर्व्वा, l. 10 गुढ़ो to गूढ़ो, p 221. l. 14 ज्ञान to द्रव्य, l. 22 षड़ to षड्. p 222. l. 2 मिषु to मियु l. 12 द्रर्व्वं to द्रव्य, l. 29 पर्म्म to धर्म्म. p 223. l. 8 षश्च to षंश्च. p 224. l. 19 पुत्रक to पुत्रप्रक. p 225. l. 6 वृत्तातां to वृत्तायां, l. 27 यपि to सपि, p 226. l. 11 विक्थ' to रिक्थ', l. 14 तन्मा to तन्मा, l. 28

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THE

PRINCIPLES OF HINDU LAW.

THE COMMENTATORS.

CHAPTER I.

Period A. D. 600 to 1000

VISVARUPA'S COMMENTARY

ON

YAJNAVALKYA.

(PARTITION OF HERITAGE).

THUS (it is prescribed), of the property acquired in the many modes mentioned before

"A father when making partition (of his property) can divide it among his sons as he pleases, either giving to the eldest the best share or in such wise that all share equally." (Yajnavalkya II. 115)*

When desirous of entering another order of giving his meritorious sons opportunity to give effect to their inclination to practise virtue or from pleasure the father may give to any of his sons whatever he pleases; not at the pleasure of the sons The father cannot be compelled to make a partition or to make any arrangement of his property by his sons Therefore he may also give to his eldest son the best share as is proper, or he may allot to them less or greater shares or make them all equal sharers. It shall be as is the father's desire. The rule depending on sons is unimpeachable (and should be made) independent of affection, merit, &c., as when a partition is made by an arbitrator.

"If he give equal shares, such of his wives as have not

* The numbering of the texts of Yajnavalkya is in accordance with Colebrooke's Mitakshara Visvarupa's order of the texts should however, be considered more authentic than that adopted by Vijnaneswara.

received Stridhana from their husband or father-in-law shall also equally share." (Yajnavalkya II, 116.)

In case of equal division, the widows of sons (predeceased) sons and grandsons and also his own wives to whom no Stridhana had been given by their husbands, father-in-law or by himself should obtain portions equal to their Stridhana. According to the text of another Smriti the two thousand *panas* is the portion of a woman ; only that amount should be given even when there is large property. When the property is small, they obtain equal shares. Others say that the right to equal shares is dependent on being ready for Niyoga. But that is wrong because of the impossibility of Niyoga. When Niyoga is possible, they can get the share alloted for the purpose

When (the son) is able to support his family and to perform religious works (the text says) :

"If one have means and do not desire (to share in the paternal estate) he shall be separated, something trifling being given to him. A distribution by father (in smaller or larger shares) is lawful." (Yajnavalkya II, 117.)

One not desirous to take a share should be given something out of respect in order to prevent future disputes and then separated. Even then if he says : "I have not got my full share, give that to me," there is dispute. We say that cannot be. Why not? Because (the text says) a legal distribution made by the father among sons separated with greater or less shares is pronounced valid. When they are independent (the rule is) :

"After the decease of both parents, the sons shall equally divide the property and the debt. The daughters take the wealth of the mother after paying debts ; in their default the issue." (Yajnavalkya II, 118.)

After the death of both parents, the sons should divide the wealth that remains after paying the debts. Son means legitimate sons. Parents mean mother and father. By 'after their the death' is meant . after the death of the father, the paternal wealth and after the death of the mother, the maternal wealth (should be divided). When there is no

wealth, the debt should be paid according to shares. From the rule of equality in payment of debts, equality in partition should be understood. When another Smriti lays down: "the eldest is entitled to one twentieth more and the best of all things" which enjoins inequality of division, that should be understood as being permissible with the consent of the brothers. Others say that the texts about inequality of shares refer to superiority of qualities, as partition of wealth is for the performance of good works. That is unreasonable, as wealth is an object of human purpose. The texts that ordain that wealth should be taken away, when sacrifices like the Agnihotra are not performed, are meant as warning to wrong doers and not as laying down that the only object of wealth is the performance of sacrifices. Therefore by the will of the brothers can there be inequality in partition. When Gautama refers to (the want of share of wrong-doers) of some he says "it is the opinion." This should be interpretated in reality as admonitory. As sons are equal participators of father's wealth, similarly daughters are of mother's wealth. But they divide after payment of debts But they do not pay the debts, when there is no wealth Is there no connection of the sons with mother's wealth? There is In the absence of daughters, sons take. Others say that in the absence of daughters, their sons take. That is improper because of the Vedic Mantra न जामये &c. If it is said that text refers to father's wealth. That is not so because of the text यदि मातरो &c.,* which refers to maternal wealth, when the mother gives birth to daughters and sons. Bahni means able to produce sons &c. There son is the heir and not the daughter. From this mention of Bahni, impotent and the like who cannot produce sons are disqualified to inherit. It may be said that when there are daughters even then sons should take. That is not so, because of the Smriti that the daughters take maternal wealth. Therefore according to other Smritis and following Vedic texts, it is established that daughters take and in their absence, sons take.

* For the full text and translation see Vol. I, Ch. 2, Sec 6,

Now about brothers living jointly: "What has been acquired by any one, as an increment without diminishing the paternal estate, likewise a gift from a friend or a marriage gift does not belong to the co-heirs." (Yajnavalkya II, 119.)

Whatever is acquired by one without detriment to the paternal wealth and what is received from friends and at marriage belong to the acquirer alone and not to the other co-parceners. 'Maitra' means what is received from friends. Audvahikam means what is received at marriage. Wealth received from friend and the like is certainly indivisible even if acquired to the detriment of the paternal wealth, on account of the strength of endeavour in acquiring Others say that wealth received from friends and the like is indivisible, when acquired without detriment to the paternal wealth on the strength of the rule that the general rule applies when general and special matters are mentioned together That is improper as it cannot apply to marriage which is (usually) performed with common wealth

Of wealth other than what is received from friends &c., the text says:

"When the common property is augmented equal division is enjoined. Of sons of different fathers the allotment of shares is in accordance (with the shares of their) fathers." (Yajnavalkya II, 121.)

In what is acquired by the use of common wealth, there is division The word तु is mentioned for showing certainty. There is division that is the meaning. Even when (in the acquision), there is physical exertion and the like, of one, there is equal division. Is there to be equal division among all co-parceners? No. Only among brothers, there is equality. Among sons of paternal uncle and the like descended from many fathers, division is in accordance with their fathers. That is, at first there is equal division among brothers. On division, the sons of one of the brothers shall divide his share equally among themselves. Grandsons take the grandfather's wealth through fathers, not like their fathers directly. This is the meaning.

Does ownership arise from partition or does partition take place when there is ownership? Ownership is from partition. So it has been said by some (and they give their reasons as follows): Otherwise the text of the Veda enjoining a person when he has a son born, to perform the fire-sacrifice would be contradicted from the impossibility of giving away property because his property is held in common. And the text about partition at one's option would also not exist Nor is it proper to say that sacrifice would be performed with the permission (of the son) as one just born cannot give permission. To remove doubts like these (the Smriti) says:

"The ownership of both father and son is equal in land, corrody or wealth received from the grandfather." (Yajnavalkya II, 122)

In land derived from the grandfather, indestructible property or other property, the right of both father and son is equal. This is undoubted. The word 'both' is used for declaring the right of the undivided (co-parcener). The separate mention of land &c, is because they are indivisible or permanent. As regards the objection as to being contrary to the performance of sacrifies (that is answered by saying) that the performance of sacrifices is possible with self-acquired wealth or by partition at the time. The text about partition at option, refers to self-acquired property. Therefore it is proved that partition takes place when there is (antecedent) ownership.

As when there is ownership there is partition, the text says:

"If a son be born of a wife of equal caste after partition, he is to share; or a share may be alloted him from the estate as it is, after allowing for income and expenditure." (Yajnavalkya II, 123.)

When there has been a partition before the ceasing of menstruation of the mother, if a son is born after partition he too has right to (family) property. Therefore it is said that when there is right there is partition. If by partition right accrues, then the son born after partition can have

no right. Here it is stated that his right exists. Therefore when there is ownership there is partition.. To establish this the text begins with विभक्तेषु &c. The word 'becomes' is understood. Though there is no specification of his share, it should be undersood that he takes the father's share. As Gautama says "the son born after separation takes his father's property." If the father has no wealth the share of the son born after partition should be from the visible property of his brothers. There is a distinction The share should be ascertained after deducting the income and expenditure. Income means what is self-acquired. What has been spent from the property is expenditure Property after deducting income and expenditure should be divided equally with the son born after partition That is made clear by (Yajnavalkya II, 120)

"He who recovers hereditary property which had been lost should not give it to the co-parceners . nor what has been gained by science"

When a separated co-parcener with the consent of other co-heirs acquires property which was ancestral but the enjoyment of which was lost at the time of partition, he need not give it to the after-born son of the father and other co-hei and also what he acquires by learning By the word 'Cha' is indicated also what is acquired by friendship and the like after deduction of income and expenditure.

Further the text says: "Property given by the parents to one belongs to him exclusively" (Yajnavalkya II, 124).

This rule applies to the share of the after-born son in the case of the co-heirs who divided during the lifetime of the father

"On partition after the death of the father, the mother also takes a share" (Yajnavalkya II, 124). The mother who has no Stridhana takes a share equal to that of a son. The word mother here, as no distinction can be made in relation to the father, means all wives of the father.

Further: "The married brothers should get married the unmarried brothers and also get the sisters married devoting

a fourth part out of their own shares." (Yajnavalkya II, 125.)

Sanskar means marriage. Brothers previously married should get the unmarried brothers married. Or having kept apart property for that purpose, they should divide. From this it should be understood that marriage should be performed with the common property. Property acquired at marriage, even if accompanied with expenditure, belongs to the acquirer alone. Therefore brothers, as also sisters, should be married at common expense. When the property is inconsiderable or when there is no property, the brother should divide equally after keeping apart for the sisters one-fourth of their share.

Equal division is for sons of equal caste. When they are of different castes.

"The sons of a Brahmin by wives of different castes have four, three, two and one shares according to caste ; the sons of a Kshatrya have three, two and one and the sons of a Vaisya two and one" (Yajnavalkya II, 126.)

When a Brahmin has sons by wives of four castes, beginning with the Brahmini wife, the property should be divided into ten, six and three shares and the sons would have four, three, two and one share according as they are born of Brahmin, Kshatriya, or Vaisya or Sudra wife. Four shares belong to the Brahman son, three to the Kshatriya, two to the Vaisya and one to the Sudra son. Similarly when (a Kshatriya marries a Kshatriya, a Vaisya or a Sudra woman) the son born of the Kshatrya wife gets three shares, the Vaisya, two and the Sudra son one, similarly when (a Vaisya marries a Vaisya wife or a Sudra wife) the Vaisya son gets two shares and the Sudra son gets one. If may be objected that a Brahman can have no son born of a Sudra wife, such marriage being prohibited. But if on account of a misapprehension of the meaning of the Smritis, such marriges do take place, the above is the rule of partition. This is the meaning.

When (it is found that) there has been unequal partition, (Yajnavalkya II, 127) says :

"Whatever after partition has taken place may be discovered to have been wrongly appropriated by one of the co-sharers shall be again equally divided by them all. This is the settled rule."

The words "settled rule" are used to establish equal partition without doubt.

The above is the rule of partition among sons by legitimate wives. In their absence, (the rule is):

"Son begotted by a sonless man by Neyoga on another person's wife is the son and heir of both according to law." (Yajnavalkya II, 128.)

Is it true that the rule does not apply to a Brahmin, as Niyoga is prohibited to him but is applicable to Kshatriyas and the rest? No. There is no prohibition in the case of Brahmin men but only in the case of Brahmin women. Therefore a Brahmin can have no son begotten by another. But a Brahmin can beget a son on women of the Kshatriya and other castes. Therefore the rule is unobjectionable that in the absence of Aurasa son, there may be substituted sons. What is the definition of an Aurasa son?

"The Aurasa is the son of the married wife. Equal to him is the Putrikaputra. The Kshetraja is the son of one's wife by a Sagotra or by another." (Yajnavalkya II, 129.)

Lawful wife is one of equal caste married according to Brahma (and other proper) rites. A son begotten by himself on her is Aurasa son. The text about the son of the appointed daughter being equal to him is to signify the superiority of the former to sons Kshetriya and the rest. The definition of Putrika should be learnt from other Smritis. Kshetraja means a son begotten or one's wife by a Sagotra or another by Niyoga.

Even when there is no appointment (there may be other kinds of sons such as) Gudhattapanna and Kanina.

"Gudhaja is the son secretly born in the house. Kanina is the son born of an unmarried daughter and is considered the son of the maternal grandfather." (Yajnavalkya II, 130.)

These two kinds of sons are of the same caste with the mother as their fathers are unknown.

"Paunarbhava is son born of a girl remarried either when a virgin or not. A Dattaka is one given by father or mother." (Yajnavalkya II, 131.)

A Paunarbhava son is one born of a female, who became a widow and had not attained maturity or of a widow who had attained maturity. For it is said in the text "having cohabited with others re-enters her husband's family."

A Dattaka is one given away by both parents, by the father alone or by the mother with the permission of the father. Vasista lays down "A woman should not give or take a son without the permission of the husband" Thus a Dattaka is one given away by the father and the mother.

"Krita is one sold by them (the parents), Kritrima is son made by oneself (a son). Swayamdatta is one who gives himself. Sadhoraja is the son who was in the womb of the mother at marriage (Yajnavalkya II, 131)

A Krita is a son sold for a price by father and mother having power over him He is the Krita son of the purchaser The particle च in the text is for signifying the want of independence of the mother (in the matter) by way of analogy with the Dattaka A Kritrima is one who having no father or mother makes himself a son. The son selfgiven is called Swayamdatta One who gives himself is so called. These sons Dattaka and the rest are considered similar according to another Smriti. Sahodha is one who was in the womb of the mother at her marriage. He is the son of the person marrying and is of the caste of the mother.

Somehow by the parents "deserted and accepted by another becomes the Apaviddha son" *i. e.* the son designated Apaviddha.

"Of these (twelve sons) failing each preceding one the other offers the Pinda and takes the inheritance." (Yajnavalkya II, 133)

Of these sons, Aurasa and the rest mentioned in their order, the succeeding one in default of the preceding, offers the Pinda and takes the inheritance. The preceding one

existing the succeeding one gets only maintenance. So says Manu : "only the Aurasa son is master of the father's wealth, the other sons receive only maintenance." Here Aurasa includes by way of illustration Kshetraja and others. He who is alone declared heir being mentioned before the others takes the entire paternal wealth. The rest only get maintenance. As regards the special mention of Kshetraja when there as an Aurasa son, in the text : "the Aurasa son while dividing the paternal wealth should give to the Kshetraja a sixth or a fifth share," and also again the text : "the Aurasa and the Kshetraja sons are the takers of the paternal wealth ; the remaining ten sons are in order takers of the Gotra and the wealth : in these texts, the Kshetraja means the son of the appointed daughter. He is surely equal to the Aurasa son ; therefore, it is said these two take the paternal wealth. How in that case does he take the sixth or the fifth ? That refers to the wealth of his own father. He takes the entire wealth of the maternal grandfather on account of his being equal to the Aurasa son. He is lost to his own father because he is begotten for the benefit of another That also is intended in the text of Vasista, "the third is the son of the appointed daughter Here by the father the daughter is given as the soil to another for raising issue, therefore, her son can be called Kshetraja. He is considered also the Kshetraja son of the begetter as his relation with his wife is by virtue of the marriage ceremony is merely with the soil. There his taking the paternal wealth without distinction with the Aurasa son refers to the maternal grandfather The inequality in shares refers to the wealth of his father. Thus there is no inconsistency The share is mentioned as the fifth or the sixth, according to the wish of the Aurasa son. As regards other kinds of sons, inequality of shares is contemplated under similar circumstances. It is thus settled that in the absence of the preceding one in the list, the succeeding kind of son takes the inheritance. Again when Manu says : "The Aurasa, the Kshetraja, the Datta, the Kritrima, the Gudhatpanna, the Apabidha, these six are heirs and kinsmen ;

the Kanina, the Sahodha, the Krita, the Paunarbhava, the Swayamdatta, and the son of the Sudra wife, these six are kinsmen who are not heirs"; what is the meaning? The five beginning with the Kshetraja are partakers of share even when co-existing with the Aurasa son. The Kanina and the rest are heirs in the absence of the preceding kinds of sons. By this, the text of Vasista is explained. So also says Sankha: "two shares should be allotted to the father, two to the Aurasa son, three to the Kshetraja and the son of the appointed daughter, to the rest one share each." The Kshetraja and the Putrikaputra take three shares, that is, each takes half of that. By the mention of the share of the father is meant that these are shares during the lifetime of the father After his demise however, the right of inheritance depends on the non-existence of the preceding kind of son according to the text of the Acharya (Yajnavalkya) The texts laying down a different order of sons should be understood as laying alternative rules at the option of the father. In default of the exercise of such option, the order mentioned by Yajnavalkya is the proper one. In this manner should be explained other texts of this nature about shares.

All these (different kinds of sons) the Dattaka and others should be of the same caste. To show this, the text says:

"This is the rule in respect of sons of equal caste mentioned by me. Even the son begotten by a Sudra on a Dasi shall have such share as the father may allot." (Yajnavalkya II, 134)

By saying that this is the rule mentioned by me, (Yajnavalkya) means that the rule mentioned in other Smritis refers to different circumstances. That is also explained. On the death of the father, the different kinds of sons take the inheritance in the order mentioned. When the father is living they take according to the rule of partition laid down by other Smritis.

That is made clear. On the death of the father, this rule of partition is ascertained by us, the said rule being

difficult to ascertain. When the father is living even when a son is born of a famale slave by a Sudra, he takes a share at the *option of the father; by this is shown* the impropriety *of* distinction (of shares) generally, but it is (allowed) only at the option of the father.

"After the father's death the brothers should assign him half-a-share; if there be no brothers, he takes the whole in default of daughter's sons." (Yajnavalkya II, 135.)

The word half is used to denote a less share. Vrihaspati says: "At option, the brothers should give to the brother born of a Sudra concubine kept in seclusion some share as a mark of respect, if he serves." Here also the text refers to one who acts in violation of the Shastras, like the son by a Sudra woman of the twice-born and does not intend to lay down a rule of lawful concubinage. This is faultless.

(Such son where) brotherless, in default of the daughter and her son, takes the entire inheritance with the permission of the king, according to the following text of Vrihaspati. "The king takes the entire wealth of the heirless person; some hold that with his permission the son of the secluded concubine takes." From the words "in default of the daughter's son," even in the case of the twiceborn the daughter's sons take the inheritance in default of sons, and from this proceeds the rule of the Sraddha of the maternal grandfather.

Thus has been declared the rule of Sudras in special cases. The general rule is:

"The lawfully wedded wife and the daughters also, both parents, brothers likewise and their sons, gentiles, cognates, a pupil and a fellow student, on failure of the first among them, the next in order is the heir to the estate of one who departed for heaven leaving no male issue. This rule extends to all classes." (Yajnavalkya II, 136-137).

The "widow" here means the pregnant widow. So says Vasista: "Now about the partition of brothers. It should be postponed till those widows who are childless obtain sons;" this shows that the pregnant widow takes the inheritance. From the use of the word 'childless' (it

appears that) the word 'son' here indicates (the fact of) a child being in the womb; if a female child be born, she becomes a Putrika. So also Gautama having said: "the widow of the childless person (takes)" adds "or she may wish for the seed." By this it appears that the word 'widow' indicates the pregnant widow. "Daughters" means appointed daughters. Manu intending the appointed daughter alone says: "The son is as one's ownself, the daughter is like the son. When she, who is one's own self exists, how should another person take?" When there is the likelihood of a son being born, she takes in default of the son. The plural is used to mean plurality of appointed daughters. The word "Cha" (and) though it means jointly, here indicates taking the wealth at option. The word 'एव' indicates that the rule is general. "Mother" and "Father" make the word "Pitarau." The Dandwa or conjunctive form is used because of their joint right to indicate that they take one by one. Notwithstanding the Dandva form, the mother has priority for it is laid down: "The wealth of the childless son is taken by the mother. When she is dead, the mother of the father takes." The text contemplates the case of one having no kind of issue. Indeed there is the text: "The father takes the wealth of the sonless person or the brothers." This should be understood as meaning when there is no mother. What about the text of Sankha: "the wealth of a deceased sonless person goes to brothers and in their default the parents take or the eldest wife."? In this, it is intended that brothers take in default of widow and daughter of the description mentioned above (*i. e.*, the pregnant widow and the appointed daughters.) Again if the father has a wife (other than the mother of the deceased who takes before brother), the words 'in their default the parents' by virtue of the text 'the father takes the wealth of the sonless person' mean that the father has the priority or by his consent, his wife, when there is no such consent, then the text 'the eldest widow takes' applies. The eldest indicates of the same caste.

In "or all widows"; by the use of the word 'वा' is indicated widows of the same caste. By this is explained the text: "if some of the brothers who are childless die or become ascetics wealth, excepting the Stridhana, is divided by the (other) brothers." Among Kshatriyas, (the wealth of deceased) sons, even when there is the father, in default of the mother, the father's mother takes; this is the case where the text 'father's mother takes' applies.

The words 'brothers likewise' indicate different kinds and includes all stepbrothers. "Their sons" is to be understood in accordance with that. Gotraja means related as Sapindas, as Samanodatas, as or persons descended from one person and as having one common family Rishi, in the order mentioned. Bandhu means maternal uncle and the like. The preceptor also should be here understood as being an heir though not expressly mentioned because of the true meaning from his being eulogised as a father Disciple means the disciple who has been invested with the sacred thread (by him). Fellow student means one invested with the sacred thread by a common preceptor Among these, in default of one mentioned before, one mentioned next takes. The rest is clear.

Thus is declared the rule of inheritance having reference to caste. Now is mentioned the rule in reference to orders of life.

"The heirs to the property of a hermit, of an ascetic and of a student in theology are in order the preceptor a virtuous pupil and a spiritual brother or one belonging to the same hermitage." (Yajnavalkya II, 138)

Brahmachari means the lifelong student. Spiritual brother means having a common preceptor. Ekatirthi means of the same order (or hermitage). The rest is clear. The rule of inheritance mentioned before applies to all castes except the lifelong student, the hermit and the ascetic, by elimination.

"The reunited shall deliver the share of a reunited (co-heir) to his son subsequently born or take it, when he is dead; similarly the uterine brother shall take or deliver the share of his uterine brother." (Yajnavalkya II, 139)

He who having separated again for some reason mixes his wealth and lives jointly with his father or brother is called reunited. When it is between father and sons, and a son is born to the father, he too should be given a share. The share of the dead is taken (by the survivors). The wealth of the uterine reunited brother is taken by the uterine brother. This refers where partition is made according to mothers. It refers also to the case of the afterborn son when the father was without wealth. As regards the text of Gautama : " as to partition among the reunited, the eldest takes the wealth of the deceased" ; here the eldest means the father who takes the wealth of deceased sons, who have no uterine brother and also of those who are not reunited with other brothers. To that effect it is said : " the father takes the wealth of the sonless man " Others say the word 'eldest' refers to brother That is deserving of consideration. The rest is clear. As explanatory of the previous verse some here cite the following verse : " The wealth of the reunited step-brother, is not taken by his stepbrother. The uterine brother even if not reunited takes it and not one born of another mother." (Yajnavalkya II 140.)

The reunited stepbrother, when there is a uterine brother, does not inherit. The uterine brother, even if not reunited, takes the wealth. This is the meaning.

He who takes the wealth (should maintain) brothers and their sons of the following description.

" The outcaste and his issue, the impotent person, the lame, the insane, an idiot, the blind and a person afflicted with an incurable disease and the like must be maintained being excluded from participation. (Yajnavalkya II, 141).

'His son' means the son of the Patita or outcaste. Insane means possessed by devil. Idiot means one always without understanding. Incurably diseased means afflicted with leprosy and the like incurable diseases, which are the effect of sin. The particle cha (and) is used for the inclusion of the deaf and the rest mentioned in other Smritis The rest is clear. Some say, the words Pangu and the rest are used as illustrative of all persons incom-

petent to perform the Agnihotra and like (sacrifices). That is wrong, as wealth is subject of human purpose and because we find the capacity of the unlearned, who are incompetent (to perform the above sacrifices) declared, as Gautama says : "The learned (co-parcener) may at his pleasure withhold from the unlearned his selfacquired property" and also "the unlearned divide equally." Therefore these are disqualified to take shares because of express texts denying their right. Their disqualification to take a share is not because of their incompetence (to perform sacrifices) or because they bear the sign of grave sins of a previous birth According to tradition, the blind and the rest who are not *patita* may take grandpaternal property. The incompetency to give more than what is necessary for maintenance, when one is able to do so, should be understood to be a mere declaration of what is proper (and not a rule) To that effect is the text of Manu : "if the eldest or the youngest is deprived of his share or if either of them dies, his share is not lost." (Manu IX 211.) This shows that because of the incompetency (of a disqualified person) to dispose of shares obtained by him, there is resumption of what is properly obtained by him Therefore his share is not lost. Thus these persons themselves alone are disqualified.

"But their Aurasa and Kshetraja sons are entitled to allotments if free from defect. Their daughters must be maintained likewise, until they are made over to husbands." (Yajnavalkya II, 142).

The sons, Aurasa and Kshetraja and the rest, of the lame and others, if they themselves are without defect, take shares. There may be Kshetraja and other sons of an impotent person. Their daughters should be maintained. The daughters also, who are Putrikas, of the lame and others should be properly provided with food and raiment, by those, who take their inheritance, till they are united to a suitable husband and properly provided to become mistresses of households.

Further :

"And their sonless wives conducting themselves a right

must be supported ; but such as are unchaste should be expelled and so indeed those who are perverse." (Yajnavalkya II, 143).

Those childless females, who are not unchaste but lead an independent life because of the pride of their Stridhana should also be banished. By the word 'Cha' is meant that they certainly are entitled to their Stridhana.

What is Stridhana? It is thus described.

"What was given to a woman by the father, mother, husband or brother or received by her at the nuptial fire or presented to her on her husband's marriage to another wife and the like is denominated woman's property." (Yajnavalkya II, 144).

'Received before the fire' means received at the time of marriage. Adhivedanika means what is given to the superseded wife or given to a wife for the purpose of supersession By the word 'Cha' should be understood that ornaments and other property mentioned in other Smritis are also Stridhana.

The rule of inheritance in regard to this is thus stated.

"What has been given by her kindred, as well as her fee or gratuity or given as Anvadheya · her Bandhavas take it, if she die without issue." (Yajnavalkya II, 145).

Bandhudatta means what is given by father and the like. Sulka means Adhivedanika and the like. Anvadheya means what is given for enjoyment by children. Bandhava *i. e.* uterme brothers take such property, when a woman dies childless. So also says Gautama: "the Sulka of the sister belongs to the uterme brothers after the death of the mother." Therefore the rule of Yajnavalkya applies after the death of the mother.

The rule of Stridhana other than Sulka and the like is :

"The property of a childless woman married according to the four approved forms, goes to her husband ; but if she leave progeny, it will go to her daughters ; in the other forms of marriage, it goes to her father." (Yajnavalkya II, 146).

Stridhana of childless women married according to four forms beginning with the Brahma belongs to the husband. If there are children, it belongs to the daughters. In connection with marriages in the forms of Asura and the like it is stated that after taking money from the husband,—

"If after betrothing, (the father) refuses to marry her, he should be made to pay with interest all the expenses incurred. If she dies, the bridegroom shall take all that he paid after deducting expenses of both sides." (Yajnavalkya II, 147).

Having promised to one, if the father marries the daughter to another, he should be punished by the king. The husband should be repaid all his expenses with increase. If she die, whatever was given by the husband should be returned to him after deducting what had been spent for him by the father.

Having said something remotely connected, now (Yajnavalkya) goes to the main subject.

"A husband is not liable to make good the property of his wife taken by him in famine, for the performance of religious duties, during illness or while under restraint." (Yajnavalkya II, 148).

By the use of the word 'husband,' it should be understood that brothers and others should also repay property taken during famine, &c. 'Now you should not go without paying,' such obstruction is called Sampratirόdhaka ; some say, it means siege of a town. The rest is clear.

Further :

"To a superseded wife, the husband shall pay a sum equal to what he pays for the second marriage, provided no Stridhana had been given to her ; if Stridhana had been given, half of the above." (Yajnavalkya II, 149).

To her who is superseded should be given property equal to what is spent on the second marriage, if no Stridhana had been given before. If Stridhana had been given, then she should be given half of such expense. This applies to the case of the wife superseded without lawful cause of supersession. Thus has the rule of partition of this kind of wealth been ascertained.

If one questions a partition saying 'I am undivided,' what shall be done ? To meet this case the author says :

"When partition is denied, the fact of it may be ascertained by the evidence of kinsmen, relatives, witnesses and by written proof, or by separate acceptance of gift or separate enjoyment of house or land." (Yajnavalkya II, 150).

In case of doubt about partition it should be ascertained by means of kinsmen and others. Kinsmen (Gnati) means maternal uncle and the like. Bandhu means sons of the paternal uncle and like. These persons are generally arbitrators of the partition and are near at hand. Others are witnesses. Documents are deeds evidencing partition. As says Vrihaspati : "brothers when separating should execute a deed or should secure blameless witnesses to avoid disputes." When there are no witnesses, or deeds mutually executed evidencing partition or accepting partition, then it should be ascertained by separate acceptance of gift, house and fields. Adeya means acceptance of gift. 'Separate house and fields' means living by possessing separate fields, house and the like. So says Narada . "Being witnesses, standing surety, making or receiving gifts separately : these things the separate brothers may do but not the unseparated." The separate enjoyment of fields is considered as removing doubts about partition.

विश्वरूपकृतयाज्ञवल्क्यस्मृतिभाष्ये
दायभागप्रकरणम्।

एवं प्रागुक्तानेकप्रकारार्जितस्य द्रव्यस्य
विभागंचेत्पिताकुर्य्यादिच्छया विभजेत्सुतान्।
ज्येष्ठंवाश्रेष्ठभागेन सर्ववास्युः समांशिनः॥ (1)

यदाह्याश्रमान्तरं प्रविविक्षुः पुत्राणां वा गुणवतां धर्मप्रवृत्तिसिध्यर्थं कौतूहलाद्वा स्वद्रव्येण पुत्रान् विभजेत् संयोजयेदित्यर्थः तदिच्छया यावद्यस्मैरोचते दातु तावदेव तस्मै दद्यात्। नपुत्रेच्छया नपुत्रैः पिता विभागं विशेषनियमं वा कारयितव्यः इत्यर्थः। अथ एवच ज्येष्ठं वा श्रेष्ठभागेनौचित्याद्योजयेत्। ऊनवाभ्यधिकंवा अथवा सर्वान् समांशिनः कुर्यात्। तत्रतथैवस्यात् यथैव पितुरिच्छेति पुत्राश्रयो विधिरनवद्यः। स्नेहगुणाद्यनपेक्षं माध्यस्थ्येनैव॥

यदि दद्यात्समानंशान् कार्याः पत्न्यः समांशिकाः।
नदत्तं स्त्रीधनंयासां भर्तावा श्वशुरेणवा॥ (2)

समांशदानपक्षे प्रमीतभर्तृकाः पुत्रपौत्रपत्न्यः स्वपत्न्यश्च भर्तृभागार्हाः कार्याः यासां भर्त्रा श्वशुरेणवा स्वयंवा स्त्रीधनं नदत्तं यद्वा यासां स्त्रीधनं नदत्तं ताः स्त्रीधन-समांशिकाः कार्याः। 'द्विसाहस्त्र. परोदायस्त्रिया' इति अत्यन्तरात्तावन्मात्रं प्रभूत-धनत्वेऽपि देयं। स्वल्पेऽपि समांशत्वेनैव। अन्येत्वनपत्यानां नियोगाभिमुखत्वेन समांशतामाहुः। तत्तु नियोगाऽसंभवादयुक्तं। संभवन्नियोगानांतु नियोगांशत्वमेव युक्तं॥

पितृद्रव्यानपेक्षस्यैव स्वकुटुम्बनरणादौ धर्मकार्येच
शक्तस्यानीहमानस्य किंचिद्दत्वा पृथक्क्रिया।
ऊनाधिकविभक्तानां धर्म्यः पितृकृतःस्मृत.॥ (3)

अनीहमानस्यापि कालांतराविरोधाय यत्किंचित् सम्मानमात्रं कृत्वा पृथक्करणं कार्यं। नन्वेवमपि यद्यसौ ब्रूयात् नमयाकृत्स्नोभागः समालब्धः स मे दीयतामिति अतोऽस्त्येवविरोध' नास्तीतिब्रूमः। कस्मात् यस्मात् ऊनाधिकविभक्तानां पित्रा पुत्राणामिति। शेषः धर्म. पितृकृतः स्मृत इति। विभागधर्मः पित्रा यः कृतः स एव स्मृतौ विहित इत्यर्थः। तस्मादविरोधः॥

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(1) Yájnavalkya II. 114. (2) *Ibdi II. 115.* (3) *Ibid II. 116.*

स्मृत्यन्तरेण तु

विभजेयुः सुताः पित्रोरूर्ध्वं रिक्थमृणं समम्।

मातुर्दुहितरःशेषमृणात्ताभ्य ऋतेऽन्वयः ॥ (1)

ऋणमपनीय अवशिष्टं विभजेयुः पुत्राः पित्रोरूर्ध्वं रिक्थं। सुतग्रहणमौरसप्रतिपत्त्यर्थं। माताच पिताच पितरौ। तयोः पित्रोरूर्ध्वं मृतयोः इत्यर्थः। पितुरूर्ध्वं च पैतृकं मातुरूर्ध्वं च मातृकं। रिक्थाऽभावेऽप्यृणमंशाशतो दद्युः। ऋणदानेच साम्यवचनाद्विभागेपि साम्यमेवेत्यवगम्यते। यत्तुस्मृत्यन्तरे "ज्येष्ठस्य विंश उद्धारः सर्वद्रव्याच्चयद्वर" मित्यादि विभागवैषम्यमवगम्यते तत् भ्रातॄणां परस्परानुमत्याविज्ञेयं। अन्येतु गुणापेक्षं विभागवैषम्यवाक्यानां विषयं वर्णयन्ति। कर्मार्थतांच तस्यमन्यमानाः तत्तु पुरुषार्थत्वाद्द्रव्यस्याऽयुक्तमेवेतिगम्यते। यानि त्वग्निहोत्राद्यकरणे द्रव्यापहरणादिवचनानि तान्यन्यायवर्त्तिपुरुषप्रशासनार्थानि नतुद्रव्यस्यक्रत्वर्थताप्रतिपादकानि। अतो भ्रातॄणामेवेच्छया विभागवैषम्यं। यत्त्वन्यायवर्त्तिनोनिरंशत्वं गौतमोक्तं तदप्येकेष इतिवचनात् परमतत्वेनैवानुशासनमात्रप्रयोजनतया व्याख्येयमित्येषादिक्। यथाच पितुः पुत्राः समांशतो धनभागिनः तथैव मातुर्दुहितरः। किन्तुशेषमृणाद्विभजेरन्। नतु अधनाया अपि ऋणंदद्युः। पुत्राणांतु मातृसंबंधः किन्नास्त्येव न नास्ति। किन्तु ताभ्यो दुहितृभ्यऋते अभावे अन्वयः पुत्राः इत्यर्थः। अन्येतु ताभ्योदुहितृभ्य ऋते तदीय एवान्वय इतिवर्णयन्ति। तत्त्वयुक्तं 'त जामये तान्वो रिक्थमारैक्' इतिमन्त्रवर्णात्। पितृधनाभिप्रायं तदिति चेत् न 'यदि मातरो जनयंत वह्निः' इति मातृसंबंध वचनात्। यदि हि मातरः स्त्रियं पुत्रंच जनयन्ति। वह्निर्वहन योग्य पुत्रः। तत्र पुत्र एव दायादो नान्यःपीत्यर्थः।अस्मादेवच वह्निवचनात् वाह्यासमर्थस्यक्लीबादेर्द्रव्याभावसिद्धिः। दुहितृसद्भावेऽपि तर्हि पुत्राणामेवास्तु न 'मातुर्दुहितर' इति स्मृतिः। स्मृत्यन्तरान्मन्त्रवर्णाऽनुसाराच्च दुहितृस्वरूपार्थतैव इत्यतस्तदभावे पुत्रगाम्येवेतिस्थितं ॥

5. सहस्थितानां चैकेन

पितृद्रव्याऽविनाशेन यदन्यत्स्वयमर्जितम्।

मैत्रमौद्वाहिकंचैव दायादानांनतद्भवेत्॥ (2)

पितृधनानुपघातन् यदन्यदर्जितं तथामैत्रमौद्वाहिकं च तदर्जयितुरेव न दायादान्तराणामपि स्यात्। मित्रादवाप्तं मैत्रं। विवाहेलब्धं औद्वाहिकं। पितृद्रव्योपघातेनापि मैत्राद्यविभाज्यमेव आरम्भसामर्थ्यात्। अन्येतु मैत्रादिकमेव पितृध-

(1) Yájnavalkya II. 117. (2) *Ibid II. 118*

मानुपघातार्जितमविभाज्यमिच्छन्ति सामान्यविशेषोपसंहृतिन्यायात् । तत्तु सामान्य द्रव्यसाव्यत्वाद्विवाहस्यायुक्तमेव ॥

मैत्रादि व्यतिरेकेणतु

सामान्यार्थसमुत्थाने विभागस्तुसमःस्मृतः ।

अनेकपितृकानांतुपितृतोभागकल्पना ॥ (1)

सामान्येन अर्थेन समुत्थानं अर्जनं प्रातिवेश्य द्रव्यस्य तत्तथोक्तं तस्मिन् सामान्यार्थसमुत्थानेद्रव्ये विभागस्त्विति अवधारणार्थस्तुशब्दः । अस्त्येव विभाग इत्यर्थः । सचेकस्यशरीरादिक्लेशेसत्यपि समएव स्मृतिविहितः इत्यर्थः । किं सर्व्वदायादानां सम एव विभागः । न भ्रातृणामेवसमस्यात् । अनेकपितृकाणांतु पितृव्यपुत्रादीनां पितृतः पितृविभागात् भागकल्पना । अर्थात् भ्रातृणां पूर्वं समो विभागः कृतेविभागेऽन्यतमस्य पुत्रास्तद्भागमंशांशतो विभिजेयुरित्यर्थः । पितृद्वारं हि पौत्राणां पैतामहद्रव्यभाक्त्वं नपितृवत्स्वत एवेत्यभिप्रायः ॥

अथ किं विभागात्स्वत्वं उतस्वत्वेसतिविभाग इति विभागात् स्वत्वमित्याहुः अन्यथा जातपुत्रस्याधानादिश्रुतिर्द्रव्यसाधारण्यात् स्वत्यागासंभवात् विरुध्यते । इच्छया वा विभागस्मृतिर्न स्यात् नच तदनुज्ञानादनुष्ठानमिति युक्तं जातमात्रस्यानुज्ञानाशक्तेः इत्याद्याशंकामपाकर्तुमाह

भूर्यापितामहोपात्ता निबन्धोद्रव्यमेवा ।

तत्रस्यात्सदृशंस्वाम्यं पितुः पुत्रस्यचोभयोः ॥ (2)

भूर्या पितामहोपात्ता निबंधो वा अक्षयनिधिः अन्यद्देवद्रव्यं तत्र पितापुत्रयोः तुल्यं प्रभुत्वं स्यात् प्रत्येतव्यम् । निर्विचिकित्समेवेत्यर्थः । उभयोरिति अविभक्तस्यैवस्वत्वज्ञापनार्थम् । भूम्यादेः पृथगुपादानं अविभाज्यत्वात् स्थायित्वाद्वा द्रष्टव्यम् । यत्वनुष्ठानविरोधादि चोद्यं तत्स्वयमार्जितनापि तत्सिद्धेन किंचित् तदानीमेववा विभज्यानुष्ठानमस्तु । यात्विच्छया विभागस्मृतिः सास्वयमुपात्तद्रव्यवतो द्रष्टव्या । अतः स्वत्वेसति विभाग इति सिद्धम् ॥

यस्माच्चस्वत्वे सति विभागः तस्मात्

विभक्तेषुसुतोजातस्सवर्णायाविभागभाक् ।

दृश्याद्वातद्विभागस्स्यादायव्ययविशोधितात् ॥ (3)

अनिवृत्तरजस्कायां मातरि विभजतां विभागोत्तरकालं यदि पुत्रो जायेत तस्यापि द्रव्यसंबंधोऽस्त्येव । तस्मात्स्वत्वेसत्येव विभाग इत्युक्तं । यदिहि विभागेन स्वत्वसम्ब-

(1) Yájnavalkya II. 121. (2) *Ibid* II.122. (3) *Ibid* II. 119.

न्धोऽभविष्यत् ततो विभक्तजस्यद्रव्यसम्बन्धो नोपापत्स्यत । अस्मिन्पुन: अस्त्येव तस्यापि द्रव्यसम्बन्ध:अत: स्वल्वइति अतोयं श्लोक: तद्विवेकायारभ्यते । विभक्तेऽपि पुत्रो जातो विभागभाक् स्यादितिशेष: । अविशेषेपि पित्र्यविभागभागित्यवगम्यं । यथाह गौतम: "विभक्तज: पित्र्यं" इति विभक्तजोपि च पितुर्निर्धनत्वे भ्रातृद्रव्यादेव दृश्यमानात्तस्यविभक्तजस्य विभाग:स्यात् । अयन्तु विशेष: आयव्ययविवर्जितात् । यत्स्वयमर्जितं स आय: । यत्तस्मात् द्रव्यमुपक्षीणं स व्यय: । आयव्ययविशुद्धं विभक्तजेन सह समं विभजनीयमित्यर्थ: ॥

एतदेव स्पष्टयति

क्रमादभ्यागतं द्रव्यं हृतमभ्युद्धरेत य: ।
दायादेभ्यो न तद्दद्याद्विद्यया लब्धमेवच ॥ (1)

पित्रादिक्रमागतं द्रव्यं विभागकाले विच्छिन्नभोगं विभक्तस्सन्नितरदायादानुमत: स्वशक्त्या यदभ्युद्धरेत् स्वीकुर्यात् तद्विभक्तजदायदेभ्य: पुनर्विभागकाले नदद्यात् विद्ययाच यल्लब्धं । च शब्दान्मैत्रादिकं च आयव्ययविशोधितादिचोक्तमेव ॥

किं च

पितृभ्यां यस्य यद्दत्तं तत्तस्यैव धनं भवेत् । (2)
जीवतां विभक्तानां विभक्तजवित्तभागे तावदयंविधि: ।
पितुरूर्ध्वं विभजतां माताप्यंशं समंहरेत् ॥ (3)

अविद्यमानस्त्रीधना माताऽपि विभागं पुत्रसममाप्नुयात् । मातृशब्दश्चायं पितृसम्बन्धाविशेषात्तद्भार्यामात्रवचनो द्रष्टव्य: ॥

किं च

असंस्कृतास्तु संस्कार्या भ्रातृभि: पूर्वसंस्कृतै: ।
भगिन्यश्च निजादंशाद्दत्वांशंतु तुरीयकम् ॥ (4)

संस्कार: परिणयनं । तत्पूर्वसंस्कृतैरसंस्कृतानां भ्रातृणां कार्यम् । तादर्थ्येनवा द्रव्यमपनीयावशिष्टं विभजनीयम् । अस्मादेव चज्ञायते साधारणद्रव्याद्विवाहनिर्वृत्ति: । सोपनयमौद्वाहिकं अर्जयितृणामेव द्रव्यमिति । अत:साधारणादेव भ्रातर:संस्कार्या: भगिन्यश्च । यदित्वल्पं द्रव्यं वानस्यात् ततोनिजादंशात्तुर्यमंशं भगिन्यर्थमपनीयान्यसमं विभजनीयम् ।

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(1) Yâjnavalkya II. 123. (2) do. II 124
(3) *Ibid* II. 124. (4) *Ibid* II. 125.

एवं सवर्णानां समो विभागः । नानावर्णानां तु

चतुस्त्रिद्व्येकभागिनो वर्णशो ब्राह्मणात्मजाः ।

क्षत्रजास्त्रिद्व्येकभागा वैश्यजौ द्व्येकभागिनौ ॥ (1)

ब्राह्मणस्य चतसृषु ब्राह्मण्यादिषु यदा पुत्राः स्युः तदा द्रव्यं दशधा षोढा त्रेधा च विभज्य ब्राह्मणादिक्रमेण चतुस्त्रिद्व्येकभाक्त्वं स्यात् । चत्वारो ब्राह्मणपुत्रांशाः क्षत्रियस्य त्रयः वैश्यस्य द्वौ एकः शूद्रापुत्रस्य । एवं क्षत्रियजातानां त्रयः क्षत्रियस्य वैश्यस्य द्वौ एकः शूद्रस्य । एवं वैश्यजातस्य द्वौ एकः शूद्रापुत्रस्येति व्यवस्था । ननु च द्विजातीनां शूद्रापत्नीनामत्वे तद्विवाहप्रतिषेधात् सत्यं स्मृत्यर्थभ्रान्त्या तु प्रवृत्तावयं विभागधर्म इत्यभिप्रायः ॥

असमांशभाक्त्वेऽपि तु

अन्योन्यापहृतं द्रव्यं विभक्तैर्यत्तु दृश्यते ।

तत्पुनस्ते समैरंशैर्विभजेरन्निति स्थितिः ॥ (2)

स्थितिवचनं निर्विचिकित्सं समविभागप्रतिपत्त्यर्थम् ॥

औरसानामयं विभागधर्मः । तदभावे तु

अपुत्रेण परक्षेत्रे नियोगोत्पादितः सुतः ।

उभयोरप्यसौ रिक्थी पिण्डदाता च धर्मतः ॥ (3)

ननु च ब्राह्मणस्य नियोगप्रतिषेधादनारम्भोऽयं क्षत्रियाद्यर्थस्तर्हि भविष्यति न च ब्राह्मणस्य नियोगप्रतिषेधः किं तर्हि ब्राह्मण्याः तेनान्योत्पादितो ब्राह्मणस्य न स्यात् न तु क्षत्रियादिकायां ब्राह्मणस्यानुत्पादकत्वम् । अतोऽविद्ध एवायमौरसाभावे कल्पः ॥

किं लक्षण औरसः पुत्र उच्यते

औरसो धर्मपत्नीजस्तत्समः पुत्रिकासुतः ।

क्षेत्रजः क्षेत्रजातस्तु सगोत्रेणेतरेण वा ॥ (4)

सवर्णा ब्राह्मादिविवाहसंस्कृता धर्मपत्नी । तस्यां स्वयमुत्पादितः पुत्र औरसः । तत्समत्ववचनं क्षेत्रजादिभ्योऽधिकत्वज्ञापनार्थं । पुत्रिकास्वरूपं स्मृत्यन्तरादवगन्तव्यम् । क्षेत्रजस्तु क्षेत्रे पत्न्यां सगोत्रेणान्येन वा नियोगोत्पादितः ॥

नियोगाऽभावेऽपि

गृहे प्रच्छन्न उत्पन्नो गूढजस्तु सुतो मतः ।

कानीनः कन्यकाजातो मातामहसुतो मतः ॥ (5)

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(1) Yájnavalkva II. 124. (2) *Ibid* II. 125. (3) *Ibid* II. 127.

(4) *Ibid* II. 128 (5) *Ibid* II. 129.

इमौतु मातृजातीयौ जनकापरिज्ञानादिज्ञेयौ ॥

एवमेवच

अक्षतायां क्षतायां वा जातः पौनर्भवःसुतः ।

दद्यान्मातापिता वा यं स पुत्रो दत्तको भवेत् ॥ (1)

मृतेभर्तरि अक्षतयोन्यामन्यसंस्कृतायां जातः पौनर्भवः क्षतयोन्यां वा । यथोक्तं अन्यैश्चरित्वातस्यैव कुटुम्बमाविशतीति । पितृभ्यां पित्रा मात्रावा तदनुज्ञया दत्तो दत्तकः । तथा च वासिष्ठः न तु स्त्री पुत्रं दद्यात्प्रतिगृह्णीयाद्वा अन्यत्रानुज्ञानाद्भर्तुरिति धर्मेण मातापितृभ्यां दत्तो दत्तकः ॥

क्रीतस्तु ताभ्यां विक्रीतः कृत्रिमःस्यात्स्वयंकृतः ।

दत्तात्मा तु स्वयंदत्तो गर्भविन्नःसहोढजः ॥ (2)

क्रीतस्तु ताभ्यां अधिकृताभ्यां मातापितृभ्यां मूल्येन विक्रीतः क्रेतुः क्रीताख्यः पुत्रः । तुशब्दो दत्तकन्यायाऽनुकर्षणेन मातुरस्वातंत्र्यप्रतिपत्त्यर्थः । स्वयमेव तु मातापितृविहीनः पुत्रत्वेनाङ्गीकृतः कृत्रिमः । दत्तात्मालक्षणलक्षण एव स्वयमेव दत्त स्वयंदत्तः आत्मा येन सतथोक्तः । एतेच दत्तकादयः स्मृत्यंतरानुसाराल्लक्षणा विज्ञेयाः । सहोढजस्तु गर्भे विन्नः गर्भस्थे यस्मिन्मातुरुद्वाहः । सच वोढुः पुत्रो मातृजातीयः प्रत्येतव्यः ॥

मातापितृभ्यामेव कथंचित्

उत्सृष्टो गृह्यतेयस्तु सोपविद्धो भवेत्सुतः । (3)

अपविद्धसंज्ञक इत्यर्थः ॥

पिण्डदोंशहरश्चैषां पूर्वाऽभावे परः परः ॥ (3)

एषां क्रमोपदिष्टानामौरसादीनां पुत्राणां पूर्वाऽभावे परः परः पिण्डदोंशहरश्च प्रत्येतव्यः । पूर्वसद्भावेतु परस्याग्रंशार्थं वृत्तिमात्रकल्पनं । तथा च स्वायंभुवं एक एवौरसः पुत्रः पित्र्यस्यवसुनः प्रभुः । शेषाणामानृशंस्यार्थं प्रदद्यात्तुप्रजीवनं इत्यौरसवचनं सर्वक्षेत्रजाद्युपलक्षणार्थं । य एवैकः पूर्वत्वाद्रिक्थभाक् स एव कृत्स्नं पितृधनंगृह्णीयात् । इतरेषामानृशंस्यार्थं प्रजीवनमात्रं कुर्यादित्यर्थः । यत्तु क्षेत्रजस्य सत्यौरसे विशेषाभानं षष्ठं तु क्षेत्रजस्यांशं प्रदद्यात्पैतृकाद्धनात् । औरसोविभजन्दायं पित्र्यं पंचममेववेति पुनश्चोक्तं । औरसक्षेत्रजौ पुत्रौ पितृवित्तस्यभागिनौ । दशापरेतुक्रमशो गोत्ररिक्थांशभागिन इति अत्र क्षेत्रजः पुत्रिकापुत्र एवाभिप्रेतः । नन्वसावौरसतुल्य एव सत्यं तेनैवचोक्तं पितृरिक्थस्यभागिनाविति । कथंतर्हि षष्ठं पंचममेववेति । जनकपितृधनाभिप्रायमेवैतत् । माता महस्यह्यसौ औरसतुल्यत्वा त्कृत्स्नांशार्हः । पितुः पुनःपरार्थेनोत्पादितत्वान्नष्टः । तदभि

(1) Yájnavalkya II. 130. (2) *Ibid* II. 131. (3) *Ibid* II. 132.

प्रायमेव च वासिष्ठं 'तृतीयः पुत्रिकापुत्र इति पित्रा क्षेत्रत्वेनवाऽपत्योत्पादनायान्यस्मै दीयते ततस्तस्यासौ क्षेत्रज इति शक्यते वक्तुं। जनयितुरपि परार्थमुत्पादकत्वात्संस्कृतत्वेन क्षेत्रमात्रतया सोसम्बन्ध इति क्षेत्रजव्यपदेशः। तत्रौरसाविशिष्ट पितृरिक्थभाक्त्वं मातामहाभिप्रायं। भागवैषम्यं तु जनकाभिप्रायमित्यविरोधः। पंचषष्ठांशयोस्त्वौरसस्येच्छया विकल्पः। अन्यत्राप्येवमेव भागवैषम्यकल्पना। अतश्चितं पूर्वाऽभावे परस्य द्रव्यसम्बन्ध इति। यत्पुनरिदं स्वायंभुवं औरसः क्षेत्रजश्चैव दत्तः कृत्रिम एवच। गूढोत्पन्नोऽपविद्धश्च दायादाबांधवाश्चषट्॥ कानीनश्च सहोढश्च क्रीतः पौनर्भवस्तथा। स्वयंदत्तश्च शौद्रश्च षडदायादबान्धवाः॥ इति अस्य कोऽर्थः। क्षेत्रजादयः पंच सत्यौरसेपि अंशभाजः कानीनादयस्तु पूर्वाभाव एव। एतेन वासिष्ठं व्याख्यातं। तथा च शंखः द्वौ भागौ पितुः द्वावेवौरसस्य त्रयः क्षेत्रजपुत्रिकापुत्रयोः एकैकमितरेषां इति। त्रयः क्षेत्रजपुत्रिकापुत्रयोरित्येकैकस्याप्यर्द्धभाक्त्वं पितृविभागवचनाच्च जीवत्येव पितर्यत सत्यौरसेंऽशभाजः ऊर्ध्वं तु आचार्यवचनात्पूर्वाऽभाव एवोत्तराधिकार इति व्यवस्था। यत्तु क्रमान्यत्ववचनं तत्पितुरेवेच्छा विकल्पतया द्रष्टव्यम्। तदभावे त्वाचर्योक्त एवक्रम इति अनयादिशाऽन्यान्यप्येवं जातीयकानि विभागवाक्यानि व्याख्येयानि॥

सर्वं चैते दत्तकादयःसजातीया इत्येत्पदर्शयितुमाह

सजातीयेष्वयं प्रोक्तस्तनयेषु मयाविधिः।
जातोपि दास्यां शूद्रेण कामतोंऽशहरोभवेत्॥ (1)

अयंमया विधिरुक्तः इतिवदन् स्मृत्यंतरोक्तानां विषयान्तरेऽर्थवत्तान्दर्शयति। तच्च व्याख्यातमेव। पितुर्परत ऐवेयन्द्रव्यसंबंधे पौर्वापर्यकल्पना इति जीवतितु स्मृत्यंतरोक्तया विभागव्यवस्थयेति॥

एतदेव स्पष्टयति मृतपितरि विभागव्यवस्थेयमस्माभिर्दुर्निरूपत्वान्निरूपिता जीवतितु जातोपिदास्यां शूद्रेण पितुरिच्छयांशहरो भवेदित्यनादरं विशेषनिरूपणस्य दर्शयति इच्छयैव च

मृतेपितरिकुर्युस्तं भ्रातरस्त्वर्द्धभागिनम्।
अभ्रातृकोहरेत्सर्वं दुहितृणां सुतादृते॥ (2)

अर्द्धवचनं च न्यूनांशप्रतिपत्यर्थं। तथा च बृहस्पतिः कामतश्च शूद्रावरोधज भ्रातुरंशं सम्मानमात्रं प्रेतपितरिदद्युः शुश्रुषवे' दिति। अत्रापिच शास्त्रातिलंघनेन प्रवृत्तस्यायं विषयः द्विजातीनामिव शूद्रापुत्रः न तु दास्यामवरोधविध्यनुमानं इत्यन-

(1) Yajnavalkya II. 133. (2) *Ibid II. 134.*

वधम्। आभ्रातृकस्तु दुहितृतत्सुताऽभावे सर्वभाक्स्याद्राजानुज्ञया। बृहस्पतिवचनादेव अनन्वयिनःसर्वं राजा तदनुज्ञयावाऽवरोधज इत्येके' इति अस्मादेवच दौहित्राभाववचनात्। द्विजातीनामपि पुत्राऽभावे दौहित्रा धनभाज इति। अत एवच मातामहश्राद्धानियमोपपत्तिः॥

एवन्तावद्वैशेषिकं शूद्रस्य विधिरुक्तः। अविशेषेणैवतु
पत्नी दुहितरश्चैव पितरौ भ्रातरस्तथा।
तत्सुतागोत्रजोबन्धुः शिष्याःसब्रह्मचारिणः॥
एषामभावे पूर्व्वस्य धनभागुत्तरोत्तरः।
स्वर्यातस्य ह्यपुत्रस्य सर्व्ववर्णेष्वयं विधिः॥ (1) .

पत्नीत्यत्र गृहीतगर्भाभिप्रेता। तथा च वसिष्ठः अथभ्रातॄणां दायविभागः याश्चानपत्याः स्त्रियः स्युः तासांचापुत्रालाभात् इति गर्भिण्यो रिक्थहर्त्र्य इति दर्शयति। पुत्रशब्दश्चायं अनपत्या इति वचनात् गर्भोपलक्षणमेवोत्पन्नंवास्त्र्यपि पुत्रिका यथास्यात्। तथाचगौतमः स्त्री चानपत्यस्येत्युक्त्वाह बीजंवालिप्सेत इत्यनेन स्त्रीवचनं गर्भिण्यर्थमिति ज्ञापयति। दुहितरश्च पुत्रिका एव। तथा च स्वायंभुवं पुत्रिकाभिप्रायेणैव यथैवात्मा तथापुत्र पुत्रेण दुहितासमा। तस्यामात्मनितिष्ठन्त्यां कथमन्यो धनंहरेदिति। पुत्रजन्माशंकायान्त्वपत्याऽभावे तदधिकारः बहुवचनं पुत्रिकाबहुत्वज्ञापनार्थं। च शब्दः समुच्चयेनापीच्छातो द्रव्यसम्बन्धार्थः। एवकारस्सर्वत्रावधारणार्थः। माता च पिता च पितरौ। सहाधिकारात्तु द्वंद्वकरणमेकैकप्राप्त्यर्थं। द्वंद्वनिर्देशेपि मातुरेवप्राथम्यं। यथाह अनपत्यस्य पुत्रस्यमाता दायमवाप्नुयात्। तस्यामपि च वृत्तायां पितुर्माताहरेद्धनमिति सर्वथाचापत्याभावेऽनपत्या इति अयमेवास्यविषयः। नत्वेतदप्यस्ति पिताहरेदपुत्रस्यरिक्थं भ्रातर एववेतिमातर्यसत्यामितद्द्रष्टव्यं। कथं शंखवचनं स्वार्यातस्य ह्यपुत्रस्य भ्रातृगामिद्रव्यं तदभावे पितरौ हरेयातां ज्येष्टावापत्नी तिउक्तलक्षणपत्नीदुहित्रभावे सोदर्यभ्रात्रभिप्रायं तद्यदिच पितुरन्यापत्नी स्यात् तदभावेतुपितरौ तत्र पिताहरेदपुत्रस्येति वचनात्पितैव वापूर्वोस्तु तदनुमतेस्तु तत्पत्नी अननुमतेस्तु ज्येष्टावापत्नीति। ज्येष्टा शब्दःसवर्णार्थः। सर्वोवा वाशब्दाद्यदि सवर्णास्युः एतेनैतदपि व्याख्यातं। भ्रातॄणामप्रजाः प्रेयात्कश्चिच्चेत्प्रव्रजेतवा। विभजेरन्धनन्तस्य भ्रातरःस्त्रीधनं विनेति च विशादिषु पुत्राणान्तु पितरि मातुरभावे पितुर्माता हरेद्धनमित्यस्य विषयः। भ्रातरस्तथेति तथाशब्दः प्रकारार्थः सापत्नादिसर्वभ्रातृसंग्राहकः। तत्सुतास्तदनुसारेणैव। गोत्रजा अपि सपिण्डसमानोदकैकपुरुषैकर्षि संबंधाः क्रमेणद्रष्टव्याः।

(1) Yajnavalkya II. 135.

बन्धुर्मातुलादिः। आचार्य्योऽयथादनुक्तोऽपि पितृसम्भवाद् गृह्यते। शिष्य उपनीतः। मन्त्रब्रह्मचार्य्येकाचार्य्योपनीतः। एतेषां पूर्वोऽभावे पराधिकार इति। स्पष्टमन्यत्॥

एवन्तावद्वर्णाश्रयो विभागविधिरुक्तः। अथुनाश्रमाश्रय उच्यते।

वानप्रस्थयतिब्रह्मचारिणां ऋक्थभागिनः।

क्रमेणाचार्य्यसच्छिष्यधर्म्मभ्रात्रेकतीर्थिनः॥ (1)

ब्रह्मचारी तु नैष्ठिकाभिप्रेतः। एकाचार्य्यसम्बन्धी धर्म्मभ्राता। एकाश्रमसम्बन्ध एक तीर्थी। स्पष्टमन्यत्। नैष्ठिकवनस्थयतिव्यतिरिक्तानान्तु वर्णानां परिशेष्यात्प्रागुक्तो विभागविधिः॥

संसृष्टिनस्तु संसृष्टी सोदरस्य तु सोदरः।

दद्याच्चापहरेच्चांशं जातस्य च मृतस्य च॥ (2)

विभक्तःसन्निमित्तान्तराद्यः पित्राभ्रात्रावा सहार्थं संसृज्य वसति स संसृष्टी तत्र यद्येवं वसतां पितापुत्राणां पितुः पुत्रो जायेत तस्यात्वंशो देयः। मृतस्य चाहर्तव्यः। सोदरस्य च सोदरः इत्येतत्तु मातृतो विभागपक्षे द्रष्टव्यं। निर्धने च पितरि विभक्तजविषयं। यत्तु गौतमीयं अथ संसृष्टिविभागः प्रेतानां ज्येष्ठस्येति अत्र ज्येष्ठः पितैवोच्यते। तस्य सोदर्य्यभ्रात्रन्तराभावे प्रेतानां पुत्राणां भ्रात्रन्तरासंसृष्टानां च धनभाक्त्वं। तदुक्तं पिताहरेदपुत्रस्येति। अन्ये तु ज्येष्ठशब्दं भ्रातर्य्याहुः तत्पुनर्विचार्यं। स्पष्टमन्यत्। अत्रापरे पूर्वश्लोकविवरणस्थानीयमितीमं श्लोकं पठन्ति अन्योदर्य्यस्य संसृष्टी नान्योदर्य्यो धनं हरेत्। असंसृष्ट्यपि चादद्यात्सोदरी नान्यमातृजः। संसृष्ट्यप्यन्यमातृजःसोदर्य्यैर्सति न धनभाक्। असंसृष्ट्यपि सोदर्य्य एव धनभागित्यर्थः॥

य एव तु धनभाक् स्यात् तेनैव भ्रातरस्तत्सुताश्चैवं रूपाः।

पतितस्तत्सुतो क्लीबो पङ्गुरुन्मत्तको जडः।

अन्धोऽचिकित्स्यरोगी च भर्तव्यास्तुर्निरंशकाः॥ (3)

तत्सुतः पतितोत्पन्न एव। उन्मत्तो ग्रहगृहीतः। जडस्त्ववेदा प्रज्ञाहीनः। कुष्टाद्य समावेयपापरोगग्रस्तोऽचिकित्स्यरोगी। चशब्दःमूलन्तरीकावधिरादिप्राप्त्यर्थः। स्पष्टमन्यत्। पंग्वादिवचनानि अग्निहोत्राद्यनधिकृतानां सर्वेषामुपलक्षणार्थानीति केचित्। तदसत् पक्षार्थत्वाद्द्रव्यस्य अवेद्यस्यचानधिकृतस्यैव द्रव्यार्हत्वदर्शनात्। यथाह गौतमः स्वयमर्जितमवेद्येभ्यो वेद्यः कामं न दद्यात् इति अवेद्याःसमं विभजेरन् इति च। अतः प्रतिषेधादेवैषामनंशत्वं न त्वनधिकृतत्वात् जन्मान्तरीय-

(1) Yájnavalkya II 137. (2) *Ibid* II. 138. (3) *Ibid* II 140

महापातकलिङ्गयोगाद्वा निरंशत्वं । पितामहद्रव्यसम्बन्धस्त्वपतितानामम्बादीनामस्त्येवेति सम्प्रदाय: । सामर्थ्येनैव तु भरणमात्रातिरिक्तद्रव्यविनियोगाशक्तेरौचित्यानुवादोऽयमित्यवसेयं । तथा च स्वायम्भुवं येषां ज्येष्ठ: कनिष्ठोवा हीयेतांशप्रदानत: । म्रियेतान्यतरोवापि तस्यभागो नलुप्यत इत्यनेन प्राप्तस्यांशस्य विनियोगाशक्तावौचित्यप्राप्तमपहारन्दर्शयति । अत एव च तस्यभागो न लुप्यत इति । एवं च स्वयमेवंत निरंशका: ॥

औरसक्षेत्रजास्त्वेषां निर्दोषा भागहारिण:

सुताश्चैषां प्रभर्तव्या यावद्वै भर्तृसत्कृता: ॥ (1)

औरसक्षेत्रजादयस्तु पुत्रा: पंग्वादीनामपि निर्दोषास्सन्तो भागहारिण एव । क्लीबस्यापि क्षेत्रजादयो भवन्त्येव । सुताश्चैषां प्रभर्तव्या: दुहितरश्च पुत्रिका: पंग्वादीनान्तु रिक्थग्राहिभि: प्रकर्षेण ग्रासाच्छादनादिना प्रभर्तव्या: यावदुचितभर्तृभिस्संयोजिता: तेश्च गृहाधिपत्येन सत्कृता: ॥

किं च ।

अपुत्रायोषितश्चैषां भर्तव्यास्साधुवृत्तय: ।

निर्वास्याव्यभिचारिण्य: प्रतिकूलास्तथैव च ॥ (2)

अव्यभिचारिण्योपि स्त्रीधनाद्यपहरणेन प्रतिकूला: स्वातन्त्र्यवृत्तय: तथैव निर्वास्या: चशब्दात् स्त्रीधनोचिता एवेत्यभिप्राय: ॥

किं पुन: स्त्रीधनमित्युच्यते ।

पितृमातृपतिभ्रातृदत्तमध्यग्न्युपागतम् ।

आधिवेदनिकञ्चैव स्त्रीधनं परिकीर्तितम् ॥ (3)

अध्यग्न्युपागतं विवाहकाले लब्धं । आधिवेदनिकं अधिविन्नायै पत्न्यै प्रदत्तं अधिवेदनार्थंवा । चशब्दात् स्मृत्यन्तरोक्तमलङ्कारादि एतत्स्त्रीधनमित्यवसेयं ॥

अत्र प्रविभाग: ।

बन्धुदत्तं तथा शुल्कमन्वाधेयकमेव च ।

अप्रजायामतीतायां बान्धवास्तदवाप्नुयु: ॥ (4)

पित्रादिदत्तं बन्धुदत्तं । आधिवेदनिकादि शुल्कं । अन्वाधेयकमन्वयभोग्यतया दत्तं । एतच्चानपत्यायां मृतायां बान्धवास्सोदर्यभ्रातरो गृह्णीयु: । तथाच गौतम: भगिनीशुल्कं सोदर्याणामूर्ध्वंमातु रिति । अस्मादेवोर्ध्वमेव मातुरयमाचार्योक्तकल्प: ॥

शुल्कादिव्यतिरेकेण तु

अप्रजास्त्रीधनं भर्तुर्ब्राह्म्यादिषु चतुर्ष्वपि ।

(1) Yájnavalkya II. 141.
(2) *Ibid* II. 142.
(3) *Ibid* II 143.
(4) *Ibid* II. 144.

दुहितॄणां प्रसूता चेच्छेषेषु पितृगामी तत् ॥ (1)

ब्राह्मादिविवाहचतुष्टये यत् स्त्रीधनं तदप्रसूतायां भर्तुः। प्रसूता चेद्दुहितॄणामेव ॥

आसुरादिविवाहप्रसङ्गादिदमुच्यते भर्तृती धनमादाय ततः।

दत्वाकन्यां हरन्दण्ड्यो व्ययन्दाप्यश्च सोदयम्।

मृतायां दत्तमादद्यात्परिशोध्योभयव्ययम् ॥ (2)

कन्या दत्वाहरन्राज्ञा दण्ड्यः। भर्त्रे च सवृद्धिकं व्ययं दाप्यः। मृतायां तु भर्त्रा यद्दत्तं तत्प्रत्याददद्यात् आत्मनिमित्तं पितृकृतञ्चोपचयं परिशोध्य ॥

एवं प्रासङ्गिकमुक्त्वा प्रकृतमेवाह।

दुर्भिक्षे धर्मकार्ये च व्याधौ सम्प्रतिरोधके।

गृहीतं स्त्रीधनं भर्ता न स्त्रियं दातुमर्हति ॥ (3)

भर्तृवचनादन्यो भ्रात्रादिः दुर्भिक्षादि गृहीतमपि दद्यादिति गम्यते। संप्रत्यवादत्वा मायाम्बसीत्येवं रोधोद्धारणं संप्रतिरोधकम्। नगरोपरोध इत्यन्ये। स्पष्टमन्यत् ॥

किं च।

अधिविन्नस्त्रियै दद्यादाधिवेदनिकं समम्।

नदत्तं स्त्रीधनं यस्या दत्तेत्वर्द्धं प्रकीर्तितम् ॥ (4)

यस्या उपरि परिणीतं तस्यै यत्परिणयने द्रव्यं गतं तत्समं देयं यदि पूर्वं स्त्रीधनं नदत्तं। अथतु दत्तं ततोऽर्द्धं देयं। एतच्चाधिवेदननिमित्तमन्तरेणाधिविन्नायान्द्रष्टव्यम्। एवमयमृक्थविभागो निरूपितः ॥

यदितु कश्चिदविभक्तोऽहमित्येवं विभागनिह्नवं कुर्यात् तत्र कथमित्यपेक्षित आह।

विभागनिह्नवे ज्ञातिबन्धुसाक्ष्यभिर्लिखितैः।

विभागभावनाज्ञेयगृहक्षेत्रैश्च यौतकैः ॥ (5)

विभागनिह्नवे ज्ञात्यादिभिर्विभागभावना कार्या। ज्ञातिर्मातुलादिः। बन्धुः पितृव्यपुत्रादिः। एतेहि प्रायशो विभागमध्यपातिनस्सन्निहिताश्च भवन्ति। अन्येवासाक्षिणः। लेख्यं वा यद्विभागप्रज्ञापकं कृतं। यथाह बृहस्पतिः कार्यमुक्तावणालेख्यं विभक्तै भ्रातृभिर्मिथः। साक्षिणोवाऽविरोधार्थं विभजद्भिरनिन्दिता' इति। अन्यववा साक्ष्यमन्योन्यमुपलभ्यमानं विभागचिह्नमभिलिखितं वा प्रतिग्रहव्यवस्थार्थं। तथादेयगृहक्षेत्रैश्चयौतकैः आदेयन्दानग्रहणं। गृहक्षेत्रैश्चयौतकं पृथक् क्षेत्रग्रहादि परिग्रहेणावस्थितिः। तथा च नारदः साक्षित्वं प्रातिभाव्यं च दानं ग्रहणमेवच। विभक्ताभ्रातरः कुर्युः नाविभक्ताः कथञ्चनेति। क्षेत्रादीनां पृथक्त्वेनावस्थितानां सन्देहापकरणमुक्तम् ॥

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(1) Yájnavalkya II. 145. (2) *Ibid* II. 146. (3) *Ibid* II. 147.
(4) *Ibid* II. 148. (5) *Ibid* II. 149.

ASAHAYA.

Shastra means law books of the character of Manu, Narada, Viswarupa and others (1).

Here Dharma is characterized by right conduct prescribed in the Vedas and Smritis and the conduct of the good (1). When men followed Dharma then there were no legal rules or lawsuits nor hatred and selfishness. At that time on account of these latter three being impossible, Dharma was preeminent. There is opposition between Dharma and legal rules, hatred and selfishness like that between shadow and light. Where there is light there is no shadow ; where there is Dharma, there are no lawsuits nor hatred nor selfishness ; when these latter exist there is no Dharma. This is what is mentioned by Narada (2).

When the plaintiff and the defendant quarrelling for a long time come to no decision, then the three Kula and others (Sreni and Gana), establish legal rules. There Kula means an assembly of a few persons of the same family ; Sreni means an assemblage of classes led by eminent merchants ; Gana means a large assembly of all castes led by Brahmans ; Adhikrito means the judge appointed by the king, and lastly the king himself. The decision of law suits is arrived at by these. Of these that which is mentioned after is superior to that mentioned before (3).

(The eighteen titles of Law) are subdivided into one hundred and thirty two, being divided into branches and their branches. They are here described. The following is their concise enumeration (4).

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(1) Extract from the Commentary on Narada Ch. I, V 15.
(2) Commentary on Narada Ch. I, V 1.
(3) Commentary on Narada Ch. I, V 7.
(4) Commentary on Narada Ch. I, V 19.

There Rinadana or recovery of debts is divided into: (1) that which should be paid and which not; (2) different kinds of debts; (3) different kinds of property; (4) means of livelihood of a Brahman in distress; (5) modes of proof; (6) interest; (7) usury; (8) surety; (9) pledge; (10) documents; (11) incompetent witnesses; (12) the rule about witnesses for the plaintiff; (13) the rule about witnesses for the defendant; (14) six cases of litigation where witnesses are bad; (15) validity of testimony how long retained; (16) false witnesses; (17) exhorting the witnesses; (18) the comparative credibility of witnesses; (19) rule in the absence of documents and witnesses; (20) ordeal by balance; (21) ordeal by fire; (22) ordeal by water; (23) ordeal by person; (24) ordeal by sacred libations. These are the twenty four sub-divisions of recovery of debt. Similarly under Deposits there are: (1) Nyasa or common deposits; (2) Aupanidhika (sealed deposits), (3) Yachitaka (loans for use); (4) Anvahitika (deposits for delivery); (5) Silpihastagata (bailments in the hands of an artisan); (6) Pogandadhana (property of a minor): these six. Under Partnership there are: (1) the common undertakings of partners in business; (2) sacrifice by officiating priests; (3) tolls: these three sub-divisions. Under Resumption of gift, there are. (1) what may be given; (2) what may not be given; (3) valid gifts, (4) invalid gifts: these four divisions. Under Breach of contract of service there are: (1) service; (2) impure work; (3) conduct of a student; (4) conduct of an apprentice residing with the master; (5) conduct of a manager; (6) fifteen kinds of slaves; emancipation from slavery; (8) legal position of a slave, (9) release of a slave by the favour of the master: these nine sub-divisions. Under non-payment of wages, there are: (1) wages of a servant; (2) cowherds and the like; (3) rules about the fee of a public woman; (4) questions about the payment of rent: these four sub-divisions. Under Sales by a person other than the rightful owner, there are: (1) sale without ownership; (2) treasure trove: these two sub-divisions. There is no sub-division of Non-delivery of a sold chattel. Under Res-

cission of purchase, there are : (1) time ; (2) worn clothes ; (3) loss on metals (caused by working on them) ; (4) weaving of cloth : these four sub-divisions. Under Transgression of a compact, there are no sub-divisions. Under Boundary disputes, there are, (1) dispute regarding a field ; (2) dispute regarding a house , (3) dispute regarding a garden ; (4) dispute regarding a well ; (5) dispute regarding sacred place ; (6) dispute regarding the boundary of village ; (7) prohibition of decoration of cross roads and the like ; (8) making a dike ; (9) rule about waste land ; (10) protection of grain : (11) compensation for destruction of grain ; (12) the foundation (of a house-holder's existence) : these twelve. Under Mutual duties of husband and wife, there are : (1) examination of a man's virile potency ; (2) gift of a maiden in marriage ; (3) the offence of insulting an officiating priest ; (4) the right time for giving a maiden in marriage , (5) the offence of casting a blemish on an unblemished maiden or suitor ; (6) marriage forms , (7) rule about unchaste women ; (8) what constitutes legitimate issue ; (9) illicit intercourse ; (10) punishment of adultery ; (11) incest ; (12) intercourse with cattle , (13) raising issue where there is no husband ; (14) illegitimacy ; (15 & 16) authorised and unauthorised intercourse of a woman with one, not her husband ; (17 & 18) rule regarding bad wives and husbands ; (19) conduct prescribed for a woman whose husband is absent ; (20) definition of a assignation : these twenty sub-divisions. Under Partition of Heritage are : (1) definition of heritage ; (2) its distribution ; (3) the rule of indivisible property ; (4) definition of stridhana ; (5) devolution of stridhana on the death of a female ; (6) rule about the (joint) property of brothers ; (7) partition between mother, father and sons ; (8) of the son of the daughter whose father is unknown ; (9) of the father of the son of a woman unauthorised to raise issue ; (10) share of a son suffering from chronic and agonising disease and the like ; (11) partition among sons of reunited co-parceners ; (12) division of the property of a deceased brother ; (13) the rule about a co-parcener engaged in the work of the family ; (14) case of doubtful partition ;

(15) different kinds of sons : these are the nineteen sub divisions.

Under Violent offences there are . (1) definition of heinous offence ; (2) punishment for such ; (3) robbery ; (4) destruction between things of small, middle and superior value ; (5 & 6) definition of two kinds of thieves ; (7) seizure of thieves ; (8) giving food and shelter (to thieves) ; (9) rule of thieves , (10) punishment of violence and theft ; (11) tracing a thief by foot marks ; (12) confiscation of property of thieves, when the thief can not be found : these twelve sub-divisions.

(1) abuse ; (2) assault ; (3) punishment for both these are the three sub-divisions of Abuse and assault. Gambling with dice and betting on animal has no sub-divisions. Under Miscellaneous there are (1) protection of the orders and castes by the king himself ; (2) dignity of the king ; (3) maintenance of Brahmanas by the king , (4) permission of the king to give away one's (whole) property , (5) description of the various modes of subsistence of a Brahmana , (6) eight things worthy of reverence · these six sub-divisions. These are the one hundred and thirty two sub-divisions in which the eighteen principal titles of law are divided (*a*).

In this connection : It is mentioned in the Dharma Shastras that the husband's younger brother or a Sapinda or Sagotra having besmeared himself with clarified butter should approach a sonless widow desiring a son, during her monthly course. Also it is laid down that when the husband is lost, dead, become an ascetic, impotent or a *patita*, another husband is prescribed for a woman. These though laid down in the Dharma Shastras are proscribed on account of the custom of men (*b*). Marriage in maternal uncle's family

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(*a*) Commentary on Narada Ch I, V 21—25 The sub-divisions of partition of heritage are 19, while only 15 are mentioned Probably four more are included in these fifteen

(*b*) The text of Parasara allowing widow marriage which is also a text of Narada is here cited by Asahaya and is thus authentic. Instead of trying to whittle it away, Asahaya has takes the manly course of laying down that widow marriage is not allowed because of public opinion. When the opinion will change, it will be allowed as the Smritis allow it. It should be allowed also on the ground laid down *i e*, it is according to reason,

though included in the Dharma Shastra and though allowed in Southern India should be disallowed. This does not prevail everywhere always. The rules of sitting, drinking and eating are respected by all. Therefore what is according to reason should be allowed. The following is the correct rule always. Immemorial custom prevalent in a country (or province) should not be over-ruled on the strength of Shastras (1).

Here if a debt is contracted by the father, he must repay it himself while living After his death his sons must repay it If they are separate, they must pay from their own shares. If they are joint they shall pay it in common. He who carries the burden of management (is the text). Here this should be said. If the eldest be absent for a long time in a distant country or is incapacitated on account of leprosy, consumption or heinous sins and the like, then he who manages the father's property, if even if he be the youngest, should pay the debt. This is the meaning (2).

In the text by uncle is meant father's brother. A debt contracted by an unseparated uncle, or brother or mother for the purposes of the family must be paid by all who take the property. If they are separate they must pay from their shares. If they are joint, they must pay it in common (3).

Here in the text and in the second Sloka the fourth in descent is the payer of the debt. Therefore this is said. When a debt payable by descendants contracted by one's self is taken by the sons, their grandsons who take his self-acquired property, must pay it. To them attaches the debt contracted by their grandfathers who have to pay their own debts. Therefore the debt which has descended (from father to son) they should pay. The liability ceases at the fourth in descent. It means fourth from the son. From him the liability of for debt ceases, (*i. e.* from) the fifth in

(1) Commentary on Narada Ch I, 40.

(2) Commentary on Narada Tit 2, V 2

(3) Commentary on Narada Tit 2, V 3.

descent from the original debtor. He who is the fourth from the original debtor pays the spiritual and temporal debts of the father, grandfather and greatgrandfather. This is supported by all the sages (1).

The three that are gone have to be worshipped. The three deceased, father, grandfather and greatgrandfather have to be freed from debts spiritual and temporal by the fourth in descent. The fourth ancestor depends on son, grandson and greatgrandson for the discharge of spiritual and temporal debts. According to all the Smritis, the liability of the fourth person for debts spiritual and temporal is well established. Those that make the fourth person not liable for temporal debts are of little understanding and should be disregarded; they undoubtedly become partakers of the sin of eating fish with bones. Here is described the story of an action at Pataliputra. There was a Brahmana suitor at Pataliputra, named Sridhara. He had lent the whole of the wealth of himself and his sons acquired with very great trouble, consisting of 10,000 Drammas to a trader by name Devadhara, at two per cent. per mensem interest as a means of livelihood. At the end of the first month 200 Drammas of interest were paid by Devadhara. On the second month Devadhara died of malignant fever. His son died of cholera. Devadhara's greatgrandson Mahidhara, who was a minor, was alive. He was addicted to gambling, spirituous liquor and bad women The management of his property was taken by his sons and maternal uncles. They were approached by a Brahmana named Smarta Durdhara, who advised them not to pay a single silver coin to the suitor Sridhara and said: I would establish the position from the Smritis. They said: if it be so, we would pay you 1,000 Drammas, we are pleased with you. Thus when at the close of the second month the uncles, the managers of Mahidhara's family, were asked to pay 200 drammas, they said: the principal is not payable, much less the interest; the Brahman Smarta Durdhara has

(1) Commentary on Narada Tit 2, V 4

aid the obligation stops with the fourth. Sridhara struck as if by an unseen club became insensible. On recovering consciousness surrounded by all his family and relatives and friends he went to the Court of Justice and after relating the story of the unforeseen blow, impeached Debadhar's greatgrandson Mahidhara with his uncles. Sureties for both parties, steadfast in right, having been obtained the uncles of Mahidhara were asked: why don't you pay further interest? They engaged the Brahman Durdhara. He said: these merchants are our friends from the time of our ancestors; therefore I say. have you not heard of the text of Narada: the grandson should pay the debt of the grandfather; the liability does not extend to the fourth in descent? According to that, the great grandson of Mahidhara, who is the fourth in descent, is not liable to pay. Ridiculing these words of Smarta Durdhara, Bhatta named Smarta Sekhara, with the approval of all great persons and having brought to bear the true meaning of all the Shastras said: "O Durdhara, you are not deficient in understanding the Smritis nor in the interpretation of words. This ten thousand wealth of Sridhara remains intact carrying monthly interest You want to deprive Sridhara having been bribed, are you not ashamed?" This having been said, Smartha Durdhara's defeat was declared (1).

Debt incurred by the father blind with lust or blinded by anger against the son, or blinded by the passion for drinking, or by gambling, or for standing surety for another: These, the son is not liable to pay. Debt for the support of the family or when in danger of life, even when incurred by the son, the father is liable to pay (2).

Not only such a debt incurred by the son, should the father pay, but the head of the family should pay the debt for the purposes of the family incurred by a disciple, by a pupil apprenticed for a fixed period, by the slave homeborn or bought, or by the wife or by the mother (3).

(1) Commentary on Narada Tit 2 V 6
(2) Commentary on Narada Tit 2 V 10-11.
(3) Commentary on Narada Tit 2 V 12.

The debt incurred by any one of the abovementioned for the family even if he dies of disease or the like while abroad, his kinsmen should pay, even if they are separated (1). A sonless widow should pay the husband's debts, if ordered to do so by him on his death-bed. Or when she takes the property of the husband, she has to pay. Or when she is unfit and the co-parceners take the property, then he who takes the inheritance pays the debt. " Sacrifice follows the wealth" : by this text, debt is also mentioned (2).

The husband is not liable for the debt of the wife, except when incurred in danger. Debt incurred to save the husband, son, daughter and the like members of the family from danger by the wife, the lord of the family should pay, for the purpose the family can not be overridden (3).

When the widow having son, possessing stridhana blinded by sexual passion, forsakes the son and takes to another husband with her stridhana, her stridhana is taken by the other husband and not by the sons But she, who having no stridhana takes to another man with the property left by her husband, that property is not taken by the other husband. To that paternal wealth the sons are entitled (4)

Acts done by the wife, daughter, daughter-in-law and the like females are invalid. Even when done, they should be considered as not done, especially gift and sale of house and field (5).

That which is given to the wife by the husband, she can enjoy or give away as she likes, excepting house, field and other immovable property (6).

In this text the whole of actions, valid and invalid are summed up. He who is the eldest in age and good quali-

(1) Commentary on Narada Tit 2 V 13.
(2) Commentary on Narada Tit 2 V 17.
(3) Commentary on Narada Tit 2 V 18.
(4) Commentary on Narada Tit 2 V 20
(5) Commentary on Narada Tit 2 V 26
(6) Commentary on Narada Tit 2 V 28.

ties in the family and is worthy of transacting business and is in a sound state of mind: whatever is done by him that alone is considered validly done (1).

These eight Adeya gifts (which may not be given) even when given, can be invalidated (2).

Here sixteen kinds of Adatta invalid gifts are described. He who accepts them out of covetousness and he who gives the eight kinds of Adeya gifts: these two, the giver of Adeya and the taker of Adatta should both be punished by the king (3)

Asahaya's Commentary on the Chapter on Inheritance has not yet been found. All that is important in the Commentary as published by

(1) Commentary on Narada Tit 2 V—42

(2) Extract from the Commentary on Narada Tit 3 V 4

(3) Commentary on Narada Tit 3 V 12

असहायकृतनारदभाष्यम्

(केशवभट्टप्रोत्साहितकल्याणभट्टपरिशोधितम्)।

तथा शास्त्रं मनुनारद विश्वरूपात्मकम् ॥ (1)

तत्र धर्मः श्रुतिस्मृत्युदितः शिष्टाचारलक्षणश्च। तानशब्दौ बलवाची...। तेन धर्मैकबला धर्मैकप्रधानाश्च पुरुषा यदा आसन्निति यदा अभवन्। तदा न व्यवहारोऽभून्न द्वेषो नापि मत्सरः। तस्मिन्काले एषा त्रयाणामप्यसंभवहेतुरयमेव प्रथमः। धर्मस्य व्यवहारद्वेषमत्सरैः सह छायातपविरोधः। यत्रातपस्तत्र न छाया यत्र छाया तत्र आतपः। यदा धर्मस्तदा न व्यवहारद्वेषमत्सराः। यदा पुनरिमे तदा न धर्म इत्येतदर्थमेवेदमभिहित भगवता नारदेन। (2)

यदा व्यवहारप्रतिज्ञार्थिप्रत्यर्थिनोः परस्परं सुचिरमपि विवदतोर्न निर्णयो भवति तदा कुलादयस्त्रयः पदार्था व्यवहारप्रतिज्ञाहेतवः। तत्र कुलानि कतिचित्पुरुषगृहीतानि। श्रेणयः प्रधानवणिक्प्रतिबद्धाः प्रकृतयः। गणा ब्राह्मणादिसमूहः। अधिकृतो धर्माधिकरणे नियुक्तः प्राड्विवाकः। नृपः स्वयमेव प्रजापालः। एतेषु स्थानेषु व्यवहाराणां निष्पत्तिः प्रतिज्ञामुखेनैव भवतीति। गुर्वभ्यस्तूत्तरोत्तरमिति। एभ्यः स्थानेभ्य उत्तरोत्तरं व्यवहारनिष्पत्तिस्थानं गुरु प्रधानमित्यर्थः। (3)

तेन व्यवहारभेदा अपि द्वात्रिंशदधिकशतप्रमाणाः शाखोपशाखावस्थिताः सक्षेपविस्तरसंख्योपलक्षिता इहापि लिख्यन्ते। तत्र तावत्संक्षेपसंख्येयम्। (4)

तत्र ऋणादाने देयादेयादिभेदाः कृताः। ऋणभेदो धनभेद आपद्ब्राह्मणवृत्तिः। प्रमाणभेदः। कुसीदवार्धुषिकभेदौ। प्रतिभूभेदः। आधिभेदो लेख्यभेदः। असाक्षिभेद । पूर्वोत्तरसाक्षिनियमः। षड्विवादपदकसाक्षिनिन्दा। साक्षिप्रत्युद्धार । कूटसाक्षिकम्। साक्ष्यधिश्रावणा। साक्षिबलाबलम्। लेख्यसाक्ष्यभावविधिः। घटविधि । अग्निविधिः। उदकविधिः। विषविधि.। कोशविधिः। इति पञ्चविंशतिभेदमृणादानं भवेत्। तथा औपनिधिके न्यासः। औपनिधिकम्। याचितकम्। अन्वाहितकम्। शिल्पिहस्तगतमिति भेदाः षट्। संभूयसमुत्थाने सामवायिकम्। ऋत्विग्याजाम्। मौल्किकं चेति भेदत्रयम्। दत्ताप्रदानिके देयमदेयं दत्तमदत्तं चेति भेदचतुष्टयम्।

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(1) Extract from the Commentary on Narada Ch. I. V. 15.
(2) Commentary on Narada Ch. I. V. I.
(3) Commentary on Narada Ch. I. V. 7.
(4) Commentary on Narada Ch. I. V. 19

अशुश्रूषाभ्युपगमे शुश्रूषाभेदः। अशुभकर्मभेदः। शिष्यवृत्तम्। अन्तेवासिवृत्तम्। अधिकर्मकृद्वृत्तम्। (पञ्चदशप्रकारदासभेदः दासवृत्तिः) (1) स्वामिप्रसादाद्दास्यविमोक्षश्चेति भेदा नव। वेतनस्यानपाकर्मणि भृतकवेतनम्। गोपालादिकम्। पण्यस्त्रीशुल्कविधानम्। भाटकविकल्पश्चेति भेदचतुष्टयम्। अस्वामिविक्रये अस्वामिविक्रयी निधिलाभश्चेति भेदद्वयम्। विक्रीयासंप्रदानमेकभेदम्। क्रीत्वानुशये कालभेदः। परिभुक्तवासोनियमः। धातुक्षयभेदः। तान्तवसंस्कारश्चेति भेदचतुष्टयम्। समयस्यानपाकर्मैकभेदम्। तथा क्षेत्रजे क्षेत्रवादी गृहवादः। उद्यानवादो निपानवादः। आयतनवादो ग्रामवादश्चतुष्पथादिभूषणार्थप्रतिषेधः। सेतुविधानं खिलविषयः। सस्यरक्षा सस्यवृद्धिहेतुविधानम् (कुटुम्बिमूलमिति) (2) द्वादशभेदाः। स्त्रीपुंसयोः संबन्धे पुंस्त्वपरीक्षा। कन्यादाननियमः। ऋत्विग्व्यतिक्रमदोषः कन्यादानकालः। कन्यावरयोरदुष्टदूषणापराधः। विवाहविधि। स्वैरिण्यादिविधानम्। अपत्यताविवेकः। संग्रहणविधानम्। स्त्रीव्यतिक्रमदण्डः। गुरुतल्पलक्षणम्। पश्वादिगमनदोषः। पत्यभावे ऽपत्यविधिः। जारजातविधानम्। नियुक्तानियुक्तापरगमनविधिः। दुष्टस्त्रीपुरुषविधानम्। प्रोषितभर्तृकानिर्णयः। संकेतलक्षणं चेत्येवं विंशति भेदाः। पदायभागे रिक्थभागविवेकः। तद्भागनिरूपणा। अविभाज्यनियमः। स्त्रीधननिरूपणा। स्त्रिया अभावे स्त्रीधननिरूपणा। भ्रातृद्रव्यविधिः। मातापितृपुत्रविभागः। अज्ञातपितृकादिविधिः। अनियुक्तापितृविधानम्। दीर्घतीव्रामयादिपुत्रांशविधिः। संसृष्टिपुत्रविभागः। प्रेतादिभ्रातृद्रव्यलब्धविधिः। कुटुम्बार्थे युक्तयासादिविधिः। विभागसन्देहनिर्णयः। पुत्रसंख्यानियमश्चेति भेदानामेकोनविंशति। साहसे साहसलक्षणम्। साहसदण्डविधानम्। आधिक्कलस्तेयम्। क्षुद्रद्रव्यमध्यमोत्तमविधानम्। द्विविधतस्करलक्षणम्। तस्करस्य व्यवकर्षणम्। भक्तावकाशदानादि। चौरविधिः। साहसस्तेयदण्डः। पदेन चौरान्वेषणविधिः चौराभावे चौरादिद्रव्यापनयनं चेति द्वादश भेदाः। वाक्पारुष्ये तद्भेदः। दण्डपारुष्ये तद्भेदः। उभयोर्दण्डलक्षणं चेति भेदत्रयम्। द्यूतसमाह्वयमेकभेदम्। प्रकीर्णके राज्ञा स्वयं वर्णाश्रमपालनम्। राज्ञोपवर्णनम्। राजब्राह्मणवृत्तिः। स्वद्रव्यदाने राज्ञो ऽभ्यनुज्ञा। ब्राह्मणकर्मवृत्तिनिरूपणम्। अष्टमङ्गलकविधानमिति षड्भेदाः। एवमेतेष्वष्टादशप्रधानव्यवहारपदेष्वन्तर्गतव्यवहारपदभेदा द्वात्रिंशदधिकशतम्। (3)

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(1) These two are wanting in the original. I have put them in my own words to make the text complete.

(2) This is wanting in the original. I have supplied the gap in my own words.

(3) Commentary on Narada Ch. I. V. 21 25.

तथा च धर्मशास्त्रोक्तम्। अपुत्रां गुर्वनुज्ञातो देवरः पुत्रकाम्यया। सपिण्डो वा सगोत्रो वा घृताभ्यक्त ऋतावियात्। तथा च। नष्टे मृते प्रव्रजिते क्लीबे च पतिते पतौ। पञ्चस्वापत्सु नारीणां पतिरन्यो विधियते। इत्यादिकधर्मशास्त्रोक्तमपि लोकाचारव्यवहारे च परित्यक्तम्। मातुलसम्बन्धस्तु धर्मशास्त्रपरिहृतो ऽपि दाक्षिणात्यैः क्रियमाणो ऽपि परिहार्य एव। सर्वत्र न वर्तते। स्थानपानभोजनादि सर्वलोके ऽप्यादृतम्। अतो ऽत्र युक्तियुक्तो विधि स्मृतः। सर्वथा एवमेव वक्ष्यमाणम्। देशे देशे य आचारः पारंपर्यक्रमागतः। स शास्त्रार्थवत्त्रैव लङ्घनीयः कदाचन। (1)

अत्र येषां पिता कृतऋणं स यावज्जीवति तावत्स्वयमेव दद्यात्। तस्मिंस्तु पितर्युपरते मृते तदृणं तत्पुत्रा एव दद्युः। यदि विभक्तास्ततः स्वांशतो दद्युः। अथाविभक्तास्तत सामान्यमेव दद्युः। यो वा तामुद्वेद्धुरमिति। अनेनैतदुक्तं भवति। यदि जेष्ठ. सचिरदूरमवसितो भवति। कुष्ठक्षयपातकादिभिरयोग्यो भवति। तदा य. को ऽपि पितृधनभारस्य धुरमुद्वहेत्। स कनिष्ठो ऽपि पितृकृतऋणं दद्यादित्यर्थ। (2)

इत्यत्र पितुर्भ्राता पितृव्यशब्देनोच्यते। तेन पितृव्येनाविभक्तेन यदृणं कृतम्। अथवा माता भ्राता वा कुटुम्बार्थं यदृणं कृतं भवति। ये केचित्तद्रिक्थभाजस्ते सर्वे तद्दद्युरिति। यदि विभक्तास्तत स्वांशतो दद्युः। अथवा अविभक्तास्तत. सामान्यमेव दद्युरिति। (3)

इत्यस्मिञ्श्लोके तथाग्रतो द्वितीयश्लोकेऽपि चतुर्थपुरुषो ऋणदायकः।..तेनैतदुक्तम्। स्वयमकृतर्णैरपि सन्ततिगुणदायैः पुत्रैर्यदृणमुद्धृतं ततेषामेव ये पौत्राः स्वयमकृतधनदायकाः। तेषामेव स्वकीयपितामहानां स्वयमकृतर्णदायकानां सतां तदृणम्। तस्मादेव क्रमादभ्याहृतं प्राप्तं तदेव तद्युरिति। तच्चतुर्थादिति च। तेभ्यः सन्ततिगुणदायकेभ्य पूर्वेभ्यो यश्चतुर्थ। तस्मादृणसम्बन्धो निवर्तते। मूलिकस्य पञ्चमत्वात्। य पुनर्मूलिकचतुर्थः स पितृपितामहप्रपितामहानामुत्तमर्णो ऽधमर्णदाता सर्वैर्मुनिभिरपि समर्थित। (4)

पूजनीयास्त्रयो ऽतीता इति। अतीताः पितृपितामहप्रपितामहास्त्रयो ऽपि चतुर्थकेनोत्तमाधमर्णयोर्द्वयोरपि निरृणीकर्तव्यास्त्रयो ऽग्रत इति। तेनैव चतुर्थकेन पुत्रपौत्रप्रपौत्रास्त्रयो ऽप्युत्तमर्णाधमर्णयोर्निरृणीकरणार्थमेव उपजीव्या इति।...

(1) Commentary on Narada Ch I V 40.
(2) Commentary on Narada Tit 2 V. 2
(3) Commentary on Narada Tit 2 V 3.
(4) Commentary on Narada Tit 2 V. 4

चतुर्थं पक्षे सर्व्वस्मृतिषूत्तमर्णाधमर्णदायकं सुप्रतिष्ठितमपि। ये ऽधमर्णदानवाक्यं कुर्वन्ति ते मन्दमतयो शास्त्रा निरपेक्षाः सकण्टकमत्याशनपापभाजो भवन्तीति कः सन्देहः।...यत्रास्मिन्नर्थे पाटलिपुत्रवृत्तमुपाख्यानमभिलिख्यते। श्रीपाटलिपुत्रनगरे ब्राह्मणः श्रीधरो नाम व्यवहारिकः। तेन स्वमलतिमहितयात्मनो वर्तनार्थमतिक्लेशार्जितं धनं वणिग्देवधरनाम्नः। द्विकशतमासकलान्तरलाभश्रद्धया प्रयुक्तं द्रम्माणां दश सहस्राणि। ततस्त्वेकमासे गते देवधरेण कलान्तरे द्रम्मशतद्वयं दत्तम्। यावद्द्वितीयमासः प्रविष्ट। तावद्देवधरः सान्निपातदोषान्मृतः। देवधरस्य पुत्रो विसूचिकामृतः। देवधरस्य प्रपौत्रो महीधरो बालस्तिष्ठति। स द्यूतमद्यवेश्याव्यसनी। सूनुर्भिर्मातुलैः प्रतिग्राहितः। ते ऽपि स्मार्तदुर्धरनाम्ना ब्राह्मणेनागत्याभिहिताः। यथा व्यवहारकश्रीधरस्य रूपको ऽपि न दातव्यः। अहं वः स्मृत्याचारेण स्थानमन्ये ऽपि रक्षयिष्यामि। तैश्चोक्तम्। यद्येवं ततो द्रम्मसहस्रमेकं लञ्चोपचारञ्च दास्यामः। वयं भवद्भिरेव सनाथाः। एवं तेषां परस्परं निष्पन्ने द्वितीयमासे च परिपूर्णे सञ्जाते व्यवहारकश्रीधरेण ते महीधरकुटुम्बधुरन्धरा मातुलाः कलान्तरेण द्रम्मशतद्वयं प्रार्थिताः। तैश्चोक्तम्। तव मूलमपि नास्ति। कुतः कलान्तरम्। ब्राह्मणस्मार्तदुर्धरेण कथितम्। तच्चतुर्थान्निवर्तत इति। तच्छ्रुत्वा श्रीधरः अदृष्टमुद्गरवाताभिघात इव मूर्च्छामधिगम्य लब्धचेतनः सकुटुम्बपरिवारस्वजनपरिवृतः शालामधिगम्य अदृष्टमुद्गरवाताभिघातवृत्तान्तेन देवधरप्रपौत्रं महीधरं समातुलमाहूय—उभयपक्षे ऽपि न्यायाविचलौ प्रतिभुवौ गृहीत्वा महीधरमातुला उक्ताः। श्रीधरस्य कलान्तरं कस्मान्न प्रयच्छत। तैश्च ब्राह्मणदुर्धरो नियुक्तः। तेन चोक्तम्। एते वणिजो ऽस्माकं पूर्व्वजपारम्पर्येण मित्रस्थाने। तेनाहं ब्रवीमि किं न श्रुतं भवद्भिरिति नारदवचनम्। ऋणं पैतामहं पौत्रास्तच्चतुर्थान्निवर्तत इति। तेन देवधरप्रपौत्रो महीधरश्चतुर्थो न ददाति। एतत्स्मार्तदुर्धरवचनमुपहस्य...दत्तसमस्तमहाजनानुमतिः...परिणीतसकलशास्त्रपरमार्थो भट्टः स्मार्तशेखरो नाम प्राह। हं दुर्धर भवान् स्मृतिशास्त्रवाक्यार्थविभागेषु न क्षमः। न चापि शब्दार्थव्याख्याने।... यत्पुनरिदं श्रीधरसत्कमेव धनं दशसहस्रमात्रं स्वरूपस्थितमेव तिष्ठति। तद्धि मासकलान्तरितमेव लञ्चोपचारलोभाच्छ्रीधरस्योद्दालितुमिच्छसि। न लज्जसे त्वं का स्मार्तदुर्धरस्यावसायः। (1)

...यत्कामान्धेन कृतम्। यत्पुत्रस्त्रीपार्थे क्रोधान्धेन कृतम्। तथा यत्सुरापानव्यसनान्धेन कृतम्। तथा यद्यूतव्यसनान्धेन कृतम्। तथा परस्परस्य प्रतिभुवा-

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(1) Commentary on Narada Tit 2 V. 6.

म्थितेन कृतम्। एतावन्न दद्यात्। अथवा कुटुम्बभरणार्थं कृतम् अथवा क्वचिदपि प्राणान्तिककृच्छ्रे यत्कृतम्। तत्पुत्रकृतमपि पिता दद्यादित्युक्तम्। (1)

इत्यत्र न केवलमीदृशं पुत्रकृतमेव पिता दद्यात्। कुटुम्बहेतोरुत्चितम्... कुटुम्बिना देयम्। तत्र शिष्यो विद्यार्थी। अन्तेवासी जल्पितकालावधिवासी शिष्यः। दासो गृहजात. क्रीतो वा। स्त्री पत्नी माता वा। एतैरपि कुटुम्बार्थं कृतमृण कुटुम्बिना दातव्यमित्युक्तम्। (2)

अतैतेषां नामोद्दिष्टानां मध्ये येन केनापि कुटुम्बार्थं कृतमृणम्..। स यदि देशान्तरं गतो रोगादिना नष्टवान्। ततो व्यवहारकस्य तदृणं ज्ञात्वादौ विभक्तैरपि दातव्यमित्युक्तम्। (3)

अत्र या स्त्री विधवीभूता अपुत्रा च। तत्र यदि पत्या म्रियमाणेन निरूपिता। ततः पतिकृतमृणं दद्यात्। अथवा सैव रिक्थग्राहिणी ऋणं दद्यात्। अथवा तस्यायोग्यत्वात्। दायादा रिक्थं गृह्णन्ति। ततो य एव रिक्थं गृह्णाति। स एव ऋणं ददाति। यतो रिक्थं संचरति तत ऋणमपीत्युक्तम्। (4)

अत्र भार्याकृतमृणं पत्युर्न भवयति आपत्कृतादृत इति। पतिपुत्रदुहित्रादि-कुटुम्बस्य आपदुद्धरणार्थं तु पत्नीकृतमपि ऋणं कुटुम्बपतिर्दद्यात्। यतः कुटुम्बार्थो हि दुस्तर। (5

अत्र या स्त्री विधवा पुत्रवती च क्रमागतस्त्रीधनवती चकामान्धा पुत्रमुत्सृज्य त्यक्त्वा अन्यं भर्तारमाश्रयेत्। स्त्रीधनस्वकीयसहितापि तस्या यत्स्त्रीधनं तस्यो ऽन्य एव भर्ता गृह्णीयान्न पुत्राः या पुनर्निःस्वा स्त्रीधनरहिता भर्तृधनसहितान्यं याति। तद्धनमन्यो भर्ता न लभते। तस्य पितृधनस्य पुत्रः स्वामीति। (6)

पत्नीदुहितृवधूप्रभृतिसर्वस्त्रीकृतानि सर्व्वाण्यपि कार्य्याणि अप्रमाणानि। अतस्ताभिः कृतान्यप्यकृतानीव द्रष्टव्यानि। विशेषतो गृहक्षेत्रदानविक्रयाः। (7)

अत्र यत्किमपि भर्त्रा परितुष्टेन दत्तम्। तच्च द्रव्यं यथाकाममश्नीयाद्दद्याद्वा गृहक्षेत्रादिस्थावरवर्जितमिति। (8)

(1) Commentary on Narada Tit 2 V. 10-11.
(2) Commentary on Narada Tit 2 V. 12.
(3) Commentary on Narada Tit 2 V. 13.
(4) Commentary on Narada Tit 2 V. 17.
(5) Commentary on Narada Tit 2 V. 18.
(6) Commentary on Narada Tit 2 V. 20.
(7) Commentary on Narada Tit 2 V 26
(8) Commentary on Narada Tit 2 V. 28.

अत्र श्लोके समस्तकृताकृतोपसंहार उक्तः। यः कुले ज्येष्ठो वयसा गुणैश्च। तथा श्रेष्ठः संव्यवहारप्रतिज्ञायुक्तः। प्रकृतिस्थश्च अविप्लुतचित्तः पुरुषो यो भवेत्। तत्कृतं तु कृतं ज्ञेयम्।...(1)

एतान्यष्टावदेयानि दत्तान्यपि चलन्ति। (2)

अतश्चैतत्षोडशप्रकारमपि दत्तमदत्तमुक्तम्। तद्यो लोभात्प्रतिगृह्णाति। यश्चाष्टप्रकारमप्यदेयं प्रयच्छति। एतौ द्वावपि अदेयदायकौ अदत्तप्रतीच्छकौ राज्ञा दण्ड्याविति। (3)

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(1) Commentary on Narada Tit 2 V 42.
(2) Extract from Commentary on Narada Tit 3 V. 4.
(3) Commentary on Narada Tit 3 V. 12

MEDHATITHI *

Dara means wife The *mantras* used in the ceremony of wedding create a wife The sacrament becomes complete by the use of those *mantras*. The twice-born alone can use *mantras*. As regards the marriage of a Sudra, in his case there are no *mantras* but other rites apply excluding the *mantras*. Therefore *mantras* must be taken as the distinctive feature of the ceremony called *marriage* These *mantras* attain completion on the seventh step. After offering fried paddy into the fire and going round the fire thrice, the bride walks seven steps citing the *mantras* from इष एकपदीभव to सखासप्तपदी भव। On the taking of these seven steps by the bride, neither the father nor the husband can cancel the gift on the acceptance Even an insane wife can not be given up In the case of a girl who has already had connection with somebody else, it is no marriage at all. The offering of fried paddy into the fire might have been made Yet she is no wife properly ; therefore there may be repudiation as in the case of any other chattel If a Sudra lays the sacred fire, as it does not thereby become the आहवनीय fire, so if a person marries a Sapinda girl, there may be the burnt offering, yet there would be no marriage. Thus a man, if he takes such a woman for his wife, ought to perform penance. She can not be married by any body else, according to the text of Vasista If a man marries a wife suffering from a disease, preventing conception, what is the remedy ? The answer is, he may marry another as in the case of a harshtongued wife If a wife, who has begotten a son, gets pthisis, she is not to be superseded, because such a case is not mentioned among the causes of supersession Even in such a case, should a man follow his pleasure, we would not stand in the way Thus the provisions about the maiden bride may be summed up thus · other chattels may be sent back within ten days, but not the virgin bride duly married. In the case of purchased brides, prior to marriage,

* Commentaries of Medhatithi on important texts of Manu on marriage, stridhana, inheritance, partition and adoption are only given here

they stand on the footing of other chattels. There is prohibition of repudiation when the bride is given away for religious purposes. So that, before the seventh step, the bride may be revoked by virtue of the text "a girl betrothed may be taken away, if a better bridegroom is obtained." On the completion of the seventh step there can be no repudiation of the gift like the gift of cows and like things. If they had been accepted, they may be given again and thus after gift there may be cessation of the first gift. Suppose a man presents a cow to another, there can be cancelment by consent, because the gift ceases when the object of it is given back Similarly if the bride and the bridegroom are faultless, there can be dissolution of the contract, before the ceremony is complete After marriage, even a wife subject to a fault, can not be given up. But she, who has already known man, is no maiden at all, because marriage is enjoyment and she has been already enjoyed You can not use a cloth within the ten days allowed for option and then send it back to the seller. The same is the case with a girl married This matter will be further elucidated under the text "only once may a girl be given away"*

Some hold that even in the case of incontinence, women may attain purity by Vedic *mantras* and private penances, and after that, there is no fault. Now this cannot be. Women are not qualified either for rites or for formulary recitals with *mantras* by dint of which they can, without publishing their vices in case of transgression, purge themselves. Hence this verse is supplementary to the verse "therefore they should be protected" Therefore those say right who hold that *mantras* are forbidden in the case of women only where they are not positively ordained, and that where women are construed as subjects of acts like presentation of offerings in the evening, as objects of purification in tonsure &c , as donees in Shradhas, in all such cases, the ceremonies must be performed without *mantras*. This view is right, the verse being in the nature of an *arthabad*. The right conclusion is that all those

* Commentary on Manu Ch. 8, V 227.

rites and ceremonies in which *mantras* are positively ordained are forbidden absolutely in the case of women. Women can not study the Vedas; therefore they cannot recite *mantras* of penance. *Indriya* means here strength, self-control, power of wisdom &c.; women do not possess them. Therefore though personally unwilling they are sometimes ravished by wicked men; hence they are to be protected. By the rest of the verse "women are false," women are condemned on account of their softness and their inconstancy.*

Here, too, *dauhitra* or daughter's son means the son of a putrika or appointed daughter. The second clause the daughter's son save the sonless man like son's son &c., is in the nature of an Arthavada or eulogistic statement because something has been elsewhere laid down. Between these two there is no distinction. Of the one (*i.e.*, the daughter's son,) the mother comes from a different family, of the other (*i e*, the son's son,) the father. Therefore, the daughter's son, too, delivers him, after his decease, in the other world †

This rule applies in the case of a brother separated in property; the former in the case of one living in jointness This is all the difference between the preceding and the subsequent rules. 'He by begetting a son unto his brother,' *i.e*, by appointment—this ought to be the exposition 'He should give his (the deceased brother's) wealth unto him and not to his mother.' This is an indication that the wife is entitled to maintenance, not to dominion over the husband's wealth, as the contrary has been mentioned hereafter to the effect that she should be given maintenance' (प्रदद्यात्तु प्रजीवनम् 9 V. 163) ‡

From this, too, (follows that) the adopted son's title to heritage is proper, because he derives neither lineage nor wealth from his natural father, by reason of disaffiliation from the latter's family. Not taking the Gotra nor the wealth, he does not give even obsequial offerings unto his natural father. Pinda follows Gotra and wealth. Offerings of Pindas, water and other obse-

* Commentrary on Manu Ch. 9. V 18
† Commentary on Manu Ch. 9, V 139.
‡ Commentary on Manu Ch. 9, V 146.

quial rites are performed unto him whose Gotra and wealth are taken. व्यपैति means retires or passes away from him. स्वधा means any offerings presented with that word—including Pinda Sradha etc. Similarly from him that gives *i. e.* from him that gives unto another his own son, Pinda passes away, that is to say, it ought not to be rendered unto him. The analogy applies to *Kritrima* sons. The *Sahodha*, the *Apabidha* and the *Dwamusyayana* sons benefit both fathers. Some, however, take हरेत् as equivalent to हारयेत् with the causal suppressed, and say that the adopted son ought to do good unto both, like the son of two fathers. The answer is reference to spiritual good supports the former meaning. Were the text.—'The son should not take (हरेत्) Gotra or wealth' (that is to say, if जनयितुः had not been specified), it might be explained in that way. But the text does not say that. So long as a meaning is available, an inferential interpretation ought not to be resorted to.*

"That boy equal (by caste) whom his mother or his father affectionately gives (confirming the gift) with (a libation of water), in times of distress as his son, must be considered as an adopted son." (Manu IX. 168.)

The word *Cha* (and) may be properly read for *Ba* (or) *i. e.* mother and father (may give in adoption.) It is not proper to give away the child of both parents, when one is unwilling. Or the word *Ba* (or) may be read. To that effect is said "mother or the father may give ; of them the father is superior." This refers to other matters and does not give the right (of giving in adoption to the mother.) The mother's right accrues in the absence of the procreator for the right of giving away belongs to the father from the text: "right is through father &c." The word Sadrisa (equal) is used because of its (child's) being subject of a special combination of circumstances. Vasista says: "Let a woman neither give nor receive &c." The word 'equal' (in the text a boy equal should be taken in adoption) does not

* Commentary on the following text:

"An adopted son shall never take the family name and the estate of his natural father ; the funeral cake follows the family name and estate, the funeral offerings of him who gives his son in adoption cease." (Manu 9 V. 142.)

mean equal in caste. What then does it mean? It means (equal) in respect of qualities appertaining to the family. A Kshatriya or the like having qualities, like those of the family of the adopter, may be an adopted son of a Brahmana. "With love" is mentioned to prohibit giving out of mercenary motives.

"Of the man who has an adopted son possessing all good qualities, that (same) son shall take the inhéritance though brought from another family." (Manu IX. 141.)

"Neither brothers nor fathers are heirs but sons alone take the wealth of their own fathers," by this it has been mentioned that all kinds of sons are inheritors of wealth. But where there is an Aurasa son, the Kshetraja and others are only entitled to maintenance "Only the Aurasa son is master of the father's wealth He gives maintenance to the rest to avoid sin" From this text is established that the adopted son is entitled to the inheritance This text gives the right when there is the Aurasa son, as otherwise there is no necessity for it What is his share in such a case? His share is one-twentieth or because no share is mentioned, it is equal to that of the Aurasa son, say some. That is improper If it were equal, as in the discourse on Putrika, here also, there would have been the text "there the share is equal" Therefore like the Kshetraja, his share should be considered as sixth or eighth. Here also there is something to be said. As a particular share is mentioned of the Kshetraja (in the text :) 'the sixth is the share of the Kshetraja,' so if the same is to be said of the son made, the reason of the repetition in this text should be considered. My teacher says that by reason of the repetition and of the want of the definition of a particular share, his share should be considered as less than that of the Kshetraja. He is not shareless, nor equal sharer with the Kshetraja.

"But whatever property may be the (Yautaka) separate property of the mother, that is the share of the unmarried daughter alone The daughter's son shall take the whole wealth of his maternal grandfather, who leaves no male issue."

(Manu 9 V. 131)

The word Yautaka means Stridhana or property of a woman kept separate. In that she alone has independent

power. Others say that she has independent power over Saudayika Stridhana. (Katyayana says:) "having received Saudayika, she has independence in respect of it." Wealth which remains after expenditure out of property given by the husband for daily expenses for food and raiment and is appropriated by a woman is not called Yautaka. The word *Eva* declares a well-known meaning and thus bars the tenor of the chapter. Therefore the Yautaka may go to the unmarried Putrika also. Gautama, who after mentioning that Stridhana belongs to the children, says: "(Stridhana) belongs to her unmarried daughters and unprovided daughters." Here unprovided means childless indigent daughters who do not attain good position in their husband's family. The daughter's son takes the entire estate of a person without a legitimate son of the body. If there be a legitimate son, what will be his share will be hereafter declared. Here also the daughter's son means the Putrikaputra and not everywhere, as before, because the previous subject has been given up and because there is authority that (the right of the Putrika) refers also to the Yautaka

"But to the maiden (sisters) the brothers shall severally give out of their shares, each out of his share one-fourth part; those who refuse to give become outcasts" (Manu 9 V 118)

The word *kanya* is generally applied to unmarried girls. The word Kaninputra or the maiden daughter's son is to be found in another Smriti, in a text beginning with the word *upattanam*. Therefore this share is of the unmarried girls. The word 'own' is in reference to children, *i. e*, the brothers should give one-fourth to the maiden sisters from their own share. When there are many sisters, they should each get one-fourth share in relation to the brother by the mother of the same caste. The meaning is "three shares the son, the fourth, the maiden daughter takes." It is said by some that 'as there is great benefit because the marriage of unmarried daughter is a duty of the father, which may be discharged during his lifetime according to his desire by the price of the entire wealth, but when he is dead, the daughters take shares: why is this rule prescribed in respect

of sons whose duty is equal?' The reason is that there is a custom that the gift should be of so much as is necessary (for marriage) but such usage is of less force than Law. In this matter custom is not uniform and when it is not uniform the rule should be taken from the Smritis. Again some say that only a certain portion is necessary to be paid and not a fourth share as is laid down in the text. To that the answer is that the amount necessary in marriage is not fixed in the same manner as 112 (cows) are prescribed as the fee of the priest in certain sacrifices (as in the Jyotistoma). It is only laid down in the Veda that "a girl is to be married with gifts of cloth and ornaments and should also be given Saudayika gifts." Ornaments may be of gold, precious stones, coral and the like of various kinds. There it is not known what property should be given and of what sort the ornament should be. Therefore it is proper to fix the limit, as the text says, 'from their share one-fourth.' Nor is it inconsistent with Shastra or reason, and other Smritis also support this position. (Yajnavalkya says): "Those of the brothers whose ritual ceremonies have not been performed) shall have them completed by others whose ritual is gone through. So in like manner as to the ritual of sisters (such of the brethren should perform) devoting a fourth part of their share." Again (the Smriti says): "Up to her marriage (a daughter or sister) takes a share, after that the husband maintains her." The meaning of this is that when the property is small of the brother and the sister and one-fourth is not sufficient for the maiden's maintenance, she takes an equal share up to her marriage. After that, according to another Smriti, she takes one-fourth When the property is small, how can she be maintained? (Therefore) it is said "afterwards the husband maintains her." The word brother is considered to mean uterine brother. What is the intention? The word brother without any qualification primarily means uterine brother. The use of the word 'separate' is an indication of that. She who has no uterine brother takes this as her share. It is not correct to say that when the step brother gives her away in marriage, she gets only Saudayika. As

there is no other text, he also gives (this share). The word 'brothers' is also understood to mean, persons having different mothers. By usage it is applied to father's sister and the like. Thus there he cannot be the objection of giving to a word many meanings. The text of other Smritis and usage (in prescribing the half-brother's liability) are here of authority. In this connection is read the text (of Narada): "What is left of the father's property after discharging the father's debts (shall be divided by the brothers)." The meaning of the text is that after setting apart what it was the duty of the father to pay, the estate should be divided. By payment of debts, the duty of marrying a daughter is also intended. In the text (of Devala) "to the daughters should be given paternal wealth &c" neither the word sister nor the word brother occurs from which the apprehension (that step-brothers need not give) may arise. The word 'separate' may be understood to refer to the share of each of the brothers and it may be applied to all the sisters. It may be objected that when there is sin attaching to brothers who do not give, they cannot be compelled to do so by force, for it is laid down that "those that do not give become outcasts" and he, who is entitled to any share, takes it and (it is not said that) it should be given to him. The answer is that when it is said, a brother gives to another brother, it does not mean gives to one having no right.

"A son of a Sudra who is begotten on a Dasi or on the Dasi of a Das, if permitted by his father, takes the share of the inheritance: thus the law of inheritance is settled." (Manu 9 V. 179.)

This refers to the son of a Sudra on an unmarried girl or on one not appointed. Thus, even if the slave girl of a slave is meant by the text, the son is not of the owner of the slave. He, if permitted by the father, takes an equal share with the legitimate son in partition during father's lifetime. Otherwise also, if the latter says 'he is your equal sharer.' When the father does not leave any injunction, that case is dealt with in another Smriti (Yajnavalkya): "Even the son begotten by a Sudra on a Dasi shall have such share at the father's option." Whatever share the father permits is meant by option. "After

the father's death the brothers are to assign him half a share." With reference to their own share they should each take two shares and give to the other one. "If there be no brothers, he takes the whole." If there be no legitimate son, he takes the whole, if there be no daughter's son. If there be a daughter's son, he is to be considered like a legitimate son, as there is no other text for a daughter's son and as that appears to be his proper position from the context. The sons of Dasis of Brahmana and the other regenerate castes are only entitled to maintenance and not to the inheritance: this is settled.

"But if a father recovers lost ancestral property, he shall not divide it, unless by his own will, with his sons, (for it is self-acquired property." (Manu IX. 209.)

The father, except what he obtains by acceptance, acquiring property himself should not be compelled to divide with the sons, who have a right to partition, if he does not so desire. What is mentioned as the time for partition of the sons while the father is living? When the father himself divides the sons, then it is said (by Gautama) "during his lifetime, when the mother is past child bearing, if he desires it" and also (by Narada): "when the father's has ceased to care for worldly interests and his sexual desire is extinguished." Because otherwise sons born afterwards who are entitled to grandfather') property will be deprived. To that effect is said (by Yajnavalkya): "the ownership of father and son is co-equal in the acquisitions of the father, whether they be land any settled income or moveables." Even though the son has ownership equal with the father until division and all sons are equally entitled to grandfather's wealth, because there is no distinction, and partition is preceded by existing right, still the father, who has got a son, can dispose of paternal property in mortgage, sale and like acts and as his right to dispose of in religious acts, support of the family and the like is allowed.

Though there may be a practice under these circumstances in the case of sons' co-ownership, as censure is shown by the text "Or in case of partition at the desire of son" &c., it is inferred that sons partitioning by force (against the father's

wishes) are sinful. As in the case of repeated acceptance of gifts, there is ownership but fault attaches to the person (accepting), so this kind of (partition) caused by sons is impure. Therefore if there be other means, the father should not be asked to separate. By that sin is incurred. Even self-acquired property is divided when the father knows that the sons are qualified. It is laid down (by Narada) that "the father when old should divide the property among the sons by giving to the eldest the best share and to the rest equal shares." This does not refer to grand-paternal property. In that the father has no power to give to the eldest son a larger share, because the ownership of both (father and son) is equal. As regards (the text of Yajnavalkya): "a distribution by the father in smaller or larger shares is lawful," even if it is applicable to grand-paternal property, (sages) desire it to be applicable only to a small portion of it, where the father has not taken full two shares for himself. As regards self-acquired property (the right to valid) unequal division is a special rule.

"But if all of them being unlearned acquire property by their labours, the division of that shall be equal (as it is) not property acquired by the father . that is a settled rule."

(Manu IX 205).

Other than learning means agriculture, trade, service of the king etc. There, earning by one member slightly more or slightly less ought not to be considered. Should one earn enormously in excess of others that is divisible. In the case of the eldest, he does not get his preferential share. Should one earn slightly more, all would equally participate in the case of other than paternal wealth. This being a statement of reason will apply to the wealth derived from a childless person.

"Property acquired by learning belongs solely to him to whom it was given. Likewise the gift of a friend, a present received on marriage or with the honey mixture." (Manu 9 V. 206).

Property acquired by learning means (acquired) by teaching and the like or by any manual art. Likewise property received from a friend or received on marriage or with the honey mixture *i. e.*, for officiating as a *Ritwika* priest (belongs

to the acquirer). Though this (last) is also property acquired by learning, still it is separately mentioned, because it arises out of a specified cause. Whatever is received from the father-in-law's house is *Audvahikam* ; some say, it means whatever is received on account of marriage from any body

"What one (brother) may acquire by his labour without using the patrimony, that acquisition by his own effort, he shall not share, unless by his own will (with his brother)."

(Manu 9 V. 208).

Non-obligation to give a share (to other members) of self-acquired gains of learning has been already mentioned. This text declares that gains other than those, such as those acquired by cultivation and the like, the acquirer need not share with his coparceners. Nor should it be said of this text that when what one has gained by one's personal efforts, he need not give to others, if he is unwilling, what is the use of the other verses relating to the gains of learning etc ? The answer is that such specific and separate mention is proper, because there is not personal effort in every such case, as for instance in the case of marriage and the like, which are effected by Mantras

"But a son, born after partition, shall alone take the property of his father or if any (of the other sons) be reunited with (the father), he shall share with them." (Manu 9 V. 216)

(A son born) after a partition in which the father has taken a double share, (by virtue of the text of Narada) : "two shares the father should take (on partition) ", may take the whole of the father's share during the father's lifetime with his consent or after his death Nor should the other brothers, say after the father's death : Why should he take two shares ? But if the father is not willing, he out of what he has got, should give to such son a share equal to his own. Reunited coparceners should give to him, after his father's death, the whole of his father's share with all accretions and accumulations. The others should take only their own proper shares. (The text of Yajnavalkya II 143) : "of the born and of the dead" &c. means that the reunited members should give to a son (born after his father's death), his father's share after his father's death, After the

father's death, his share, the sons (should take and) give the sister's share as understood from the texts (of Manu 9 V. 210 to 212): "If brothers divided and living again together &c." (It should be mentioned here) that it has been laid down by Vasistha, that before delivery of mothers with child, there is no partition.

"His uterine brothers having assembled together, shall equally divide it, and those brothers who were reunited (with him) and uterine sisters. (Manu 9 V. 212.)

Those uterine brothers and brothers who are reunited take (the share mentioned in the preceding text); and also uterine sisters, *i e.* those that are born of the same womb and are childless, who should be considered as Sanavi or born of the same navel *i. e* as *jnatis*. They who are married and are of the Gotra of the husband, are not considered Sanavi sisters here. 'The uterine brothers also who are reunited' by the use of the word *Cha* (also) here all sisters also are included: this supposition should not be made. Uterine brothers take. As to the rule reunited uterine brothers, (take), (the meaning is that) when there are none such the share of the reunited brother is obtained by reunited non-uterine brothers. When there are unreunited uterine brothers and reunited uterine brothers, they do not both take shares on partition, for it is inconsistent (with the text): "A half-brother being reunited does not take the estate of a half-brother not reunited; but the uterine brother though not reunited may take and not the reunited brother born of another mother." The meaning of this text is that the half-brother though reunited does not take, when there is a uterine brother though not reunited; among uterine brothers the reunited one takes and not the others though uterine. To that effect (is the text of Yajnavalkya) "a reunited brother (takes the estate) of (a deceased) reunited brother and a uterine brother (takes the estate) of (a deceased) uterine brother." When there are no uterine brothers, then the half-brothers with whom the decased was reunited, take, and not the others.**

मेधातिथिः।

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दारा भार्य्या तस्यालक्षणंनिमित्तंविवाहमन्त्रास्तेतत्र प्रयुक्तैर्विवाहाख्यःसंस्कारोनिर्वर्त्तते द्विजातीनांपुनर्मन्त्रास्तत्र शूद्रस्य दारप्रसङ्गोनहि तस्य मन्त्राःसन्ति मन्त्रवर्जंसर्वान्येति कर्तव्यतास्ति अतोविवाहाख्यसंस्कारोपलक्षणंमन्त्रास्तेषांमन्त्राणांनिष्ठा समाप्तिः सप्तमे पदे विज्ञेया लाजहोममभिनिर्वर्त्य त्रिःप्रदक्षिणमग्निमावर्त्य सप्तपदानि स्त्री प्रक्रम्यते इषएकपदीभवेत्यादियावत्सखासप्तपदीभवेति तस्मिन्प्रक्रान्ते कन्याया पदे कन्यापितुर्वोढ़ुर्वानुशयोनास्ति उन्मादवत्यपि भार्य्यैव न त्याज्या मैथुनवत्यास्तु नैवासौ विवाहः सत्यपि लाजहोमादाविति कर्तव्यतास्वरूपे न भार्य्या सा अतस्तत्र द्रव्यान्तरवदनुशयः यथाच शूद्रकर्तृकेणाधानेनाहवनीयोभवति सपिण्डायाश्च कृतेऽप्यग्निसंस्कारे विवाहस्वरूपत्वन्तत्र तु प्रसिद्धम्॥ संस्कारकरणादेकः प्रायश्चित्तीयते पुमान्। कन्या चान्यस्याप्यविवाह्या वसिष्ठवचनात्। यदि प्रजननविघातरोगगृहीतामूढ़ा न त्यजति का तर्हि गतिः प्रत्यधिकारे अन्यामुद्वाहयिष्यति सद्यस्त्वप्रियवादिनीतिवत् कृते तु जातपुत्रायामाधाने यदि क्षयीव्याधिःस्यात्तथापि नैनामधिविन्देदधिवेदननिमित्तानांपरिगणनात् तत्रापि यदि कामतस्तुप्रवृत्तानामित्येतत्प्रयोजकमिष्यते न निवारयामस्तेनैव संक्षेपतः कन्यायां धर्मोयथान्येषांद्रव्याणांदशाहाद्दूर्ध्वमपि सान्ना प्रत्यर्पणंनैवंकन्यानांकृतविवाहानांशुल्कदेयानामपि प्राग्विवाहाद्द्रव्यान्तरधर्मः। या तु धर्माय दीयते तस्यानैवानुशयइति वचनात् तत्रापि॥ दत्तामपि हरेत्कन्यांज्यायांश्चेद्वरआव्रजेदित्यस्यैवापहारश्चासप्तमपदात् सप्तमेतुपदेवरे दानानिवृत्तेर्गवादिद्रव्यदानवन्नास्त्यपहारः अथैव केन चित्कस्मैचिद्वविदत्तायां न तयोरन्योन्येच्छयानुशयोदानादाने दानस्य तदानीमेवनिवृत्तत्वात्। प्रतिगृहीतंचेद्दाने पुन प्रयच्छेत्तद्दानोत्तरमेवतत्प्राप्तत्पूर्वंदाननिवृत्तिः। एवसगुणयोः कन्यावरयोर्नान्योन्येच्छयात्यागोऽस्तिप्रागपि विवाहात् विवाहे तु कृते दोषवत्याअपि नास्तित्यागः कन्यायाः। स्पृष्टमैथुना या तुकन्यैव नभवत्यतोऽसौ त्यज्यते कन्यायायतोविवाहोविहितोविवाहश्चोपयोगस्थानीयोयथा परिभुक्तंवस्त्रमन्तर्दशाहमपि नैव विक्रेतेऽर्प्यते तथैव कन्या कृतविवाह्य पुनश्चायमर्थोनिर्णेष्यते सकृत्कन्याप्रदीयतइत्यत्रान्तरे॥ (1)

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(1) भाष्यम् मनु ८ अ २२७

पाणिग्रहणिकामन्त्रानियतंदारलक्षणम्।
तेषांनिष्ठा तु विज्ञेया विद्वद्भिः सप्तमे पदे॥

केचिदेवंमन्यन्ते सत्यपि प्रमदाव्यभिचारे वैदिकेन जपेन रहस्यप्रायश्चित्तादिना शुद्धिमाप्नुवन्ति ततोनास्ति दोषइति तन्न नहि स्त्रीणांमन्त्रैः क्रियाजपोप्यस्ति येन वृत्तव्यतिक्रमेऽप्रख्यातैः स्वतएव वेदुष्याच्छुद्धिमाप्नुवन्तितस्मादवतोरन्याइत्येतच्छेषमेवेतत् अतोयेकेचिदविहितमन्त्रेमन्त्रप्रतिषेधोयमिति वर्णयन्ति ततश्च यत्र स्त्रियः कर्तृतया सम्बध्यन्तेसायम्बलिहरणादौ तथा संस्कार्यतया चूडादिषु सम्प्रदानतया श्राद्धादौ तत्र सर्वत्र मन्त्रप्रतिषेधादमन्त्रकंस्त्रीणांश्राद्धादिकार्यमिति ते ते युक्तवादिनोऽन्यपरत्वादस्यार्थवादितया यदस्ति तदालम्बनन्यायेन विहितप्रतिषेधमन्त्रसम्बन्धमन्त्रचूडासंस्कारापेचंव्याख्येयमेतत् अध्ययनाभावाच्च प्रायश्चित्तमन्त्रजपाभावप्रेचया निरिन्द्रिया इन्द्रियंवीर्यधैर्यप्रज्ञाबलादि तासांनास्यतोनिच्छन्त्योपि कदाचित्पापाचारैर्बलिनाक्रम्यन्ते ततोरचितुंयुक्ताः स्त्रियोवृत्तमिति शीलस्नेहत्वास्थिरत्वादन्यवचनेन निन्द्यते ॥ (1)

अत्रापि दौहित्रः पुत्रिकापुत्रएवविज्ञेयः। दौहित्रोपि ह्यमुत्रैनंसन्तारयति पौत्रवत्। अयमप्यर्थवादएवविहितत्वादर्थस्य एतयोर्विशेषोनास्ति। एकस्य माताऽन्यकुलीनाऽपरस्य पिता तस्माद्दौहित्रोप्यमुत्रलोक एनम्प्रेतन्सन्तन्सततंसन्तारयति नरकात्पूर्वस्मात् ॥ (2)

विभक्तधनस्य भ्रातुरभावे विधिरयमुच्यते पूर्वस्तु सहवसतएतावान्पूर्वोत्तरयोर्विध्योर्विशेषः सोपत्यंभ्रातुरुत्पाद्य नियोगधर्मेणेति व्याख्येयं न दद्यात्तस्यैव न पुनस्तदीयाये च माते अनेनैवच दर्शेन स्त्रियोभरणार्हा नतुपतिधनेस्वयंइति अन्यथैववक्ष्यमाणत्वात्तस्यैवजीवनंदद्यादिति ॥ (3)

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(1) भाष्यम् मनुः ९ अ १८

नास्ति स्त्रीणांक्रियामन्त्रैरिति धर्मे व्यवस्थितिः।
निरिन्द्रियाह्यमन्त्राश्च स्त्रियोऽनृतमितिस्थितिः॥

(2) भाष्यम् मनुः ९ अ १३९

पौत्रदौहित्रयोर्लोके विशेषोनोपपद्यते।
दौहित्रोपि ह्यमुत्रैनंसंतारयति पौत्रवत् ॥

(3) भाष्यम् मनुः ९ अ १४६

धनं यो बिभृयाद्भ्रातुर्मृतस्य स्त्रियमेव च।
सोऽपत्यं भ्रातुरुत्पाद्य दद्यात्तस्यैव तद्धनम् ॥

इतश्च भागहरत्वंदत्रिमस्य तूक्तं यतोजनयितुः सकाशाङ्गोत्रंधनंच नहरति वंशादपेतत्वात् गोत्ररिक्थग्रहणाभावेच पिण्डमपि जनयित्रे नददाति गोत्ररिक्थानुगोहि पिण्डोगोत्ररिक्थे ऽनुगच्छति यदीये गोत्ररिक्थे गृह्येते तस्मै पिण्डोदकदानाद्यौर्ध्वदेहिकंक्रियते व्यपैति तस्मान्निवर्तते स्वधाकारसाधनंपिण्डश्राद्धादि लभ्यते तद्दत्तोयोन्यस्मिन्स्वपुत्रंददाति तस्मान्निवर्तते न तस्य कर्तव्यमित्यर्थः। एवएवन्यायः कृत्रिमादीनांसहोढापविद्धद्व्यामुष्यायणानामुभयोपकारकत्वं अन्येतु न हरेत्रहार्यैरित्यन्तर्भावितण्यर्थंव्याचक्षतेतेनोभयस्यापि द्व्यामुष्यायणवदुपकर्तव्यमित्याहुः। उत्तरस्तूपकारोपक्रमः तमेवगमयन्ति यदि गोत्ररिक्थे न हरेत्पुत्रस्तदातु व्याख्येयं नचैतदुक्तंनह्यर्थान्तरभावे प्रमाणंवक्तव्यम्॥ *

माता पिता वा दद्यातां यमद्भिः पुत्रमापदि।
सदृशंप्रीतिसंयुक्तंसज्ञेयोदत्रिमः सुतः॥ ९—१६८॥

चशब्दः पठितव्यायुक्तोमातापिताचेति नह्युभयोरपत्यमन्यतरानिच्छांदातुयुक्तं। अथापि वाशब्दः पठ्यते। तथाचोक्तं माता पिता वा दद्यात्तयोरपि पिताश्रेयानिति कार्यान्तरविनियोगविषयमेतत् ननु सत्त्वापत्तौ मातुःस्वमिति पितरिएवंप्रतिदातृत्वं-सत्यंपितृतइति वचने अभावे बीजिनामितियोगविशेषविषयत्वात्सदृशमित्युक्तं। आहच वसिष्ठः न स्त्रीपुत्रंदद्यात्प्रतिगृह्णीयाद्वेति॥ सदृशं न जातितः किं तर्हि कुलानुरूपैर्गुणैः क्षत्रियादिरपि ब्राह्मणस्य दत्तकोयुज्यते प्रीतिग्रहणंलोभादिना प्रतिषेधार्थम्॥ १६८॥

उपपन्नोगुणैः सर्वैः पुत्रोयस्य तु दत्त्रिमः।
सहरेतैव तद्रिक्थंसंप्राप्तोप्यन्यगोत्रतः॥ ९—१४१॥

न भ्रातरोन पितरः पुत्रा रिक्थहराः पितुरिति सर्वपुत्राणांरिक्थहरत्वमुक्तं। सति त्वौरसे प्रजीवनमात्रभाक्तंक्षेत्रजादीनां। एकएवौरसः पुत्रः पित्र्यस्य वसुनः प्रभुः। शेषाणामानृशंस्यार्थंप्रदद्यात्तुप्रजीवनमिति। अतोऽस्ति सिद्धमेव दत्रिमस्य रिक्थहरत्वं। इदन्तु वचनंसत्येवौरसे प्राप्त्यर्थमन्यथा न किंचिदनेन क्रियते कियांस्तु तस्य भागइति विशेषादंशाभावात्समश्चौरसेनेति केचित्। तदयुक्तं साम्येह्यभिधीयमाने यथैव पुत्रिकाप्रकरणे पठितमेवमत्राप्यपठिष्यत् समस्तत्वविभागःस्यादिति तस्मात्-क्षेत्रजवत्षष्ठाष्टमादिभागकल्पनाकार्येत्युच्यते। अत्राप्यस्ति वक्तव्यं यथैव भागविशेषउक्तः क्षेत्रजस्य षष्ठन्तु क्षेत्रजस्यांशमिति तथैव कृत्रिमेवक्ष्यति तस्मात्पुनर्वचने प्रयोजनंचिन्त्यं। उपाध्यायस्त्वाह पुनर्वचनाद्विशेषनिर्देशाभावाच्च क्षेत्रजाद्यूना कल्पना युक्ता नत्वभागता नापि समभागता न क्षेत्रजतुल्यतेति॥ १४१॥

* भाष्यम् मनु ९—१४२

मातुस्तु यौतकं यत्स्यात् कुमारीभाग एव सः ।
दौहित्र एव च हरेदपुत्रस्याखिलं धनम् ॥ ९—१३१ ॥

यौतकशब्दः पृथग्भावेन च स्त्रीधने तत्र हि तस्याएव केवलायाः स्वाम्यं अन्येतु सौदायकमेव तत्सम्बन्धस्त्रीधनं तत्र हि तस्याः स्वातन्त्र्यम्। सौदायिकं धनंप्राप्य स्त्रीणां स्वातन्त्र्यमिष्यते। न भक्तभूषाद्युपयोगिनः अन्वाहिताद्भर्त्तृदत्ताद्धनादुपयुक्तशेषमेव युवत्या स्वीकृतं यौतकमाहुः। कुमारीभाग एव कुमारीग्रहणा (दूणी)स्ति एवकारस्य च प्रसिद्धानुवादकत्वात्प्रकारणबाधबात्वमतश्च पुत्रिकाकुमारीविषयमपि यौतकम्। एवं च गौतमः स्त्रीधनं तदपत्यानामित्युक्त्वाह दुहितृणामप्रत्तानाम प्रतिष्ठितानां चेति। तत्राप्रतिष्ठिता ऊढा अनपत्या निर्धना भर्त्तृगृहे याभिः-प्रतिष्ठा न लब्धा। दौहित्र एव च हरेदपुत्रस्यात्यौरसपुत्रस्याखिलधनंहरेत् सतित्वौरसे यावानंशस्तंवक्षति। अत्रापि पुत्रिकापुत्रएव दौहित्रो न सर्व्वत्र पुर्व्ववत् प्रकरणात्-गम्यते * यौतकविषयत्व एव प्रमाणसम्भवात् ॥ १३१ ॥

स्वेभ्योंऽशेभ्यस्तु कन्याभ्यः प्रदद्युर्भ्रातरः पृथक् ।
स्वात्स्वादंशाच्चतुर्भागंपतिताः स्युरदित्सवः ॥ ९—११८ ॥

कन्याशब्दः प्रायोऽनुढासु प्रयुज्यते कानीनपुत्रः स्मृत्यन्तरेचोपात्तानामितिपठ्यते अतोऽनूढायामयंभागउच्यते स्वाभ्यः प्रजाभ्यइत्यपेक्षया स्वाभ्योभ्रातरः कन्याभ्यश्चतुर्भागमंशंदद्युःस्वादंशात्। यत्र बह्व्यः कन्याःसन्ति तत्र समानजातीयभ्रात्रपेक्षया चतुर्थांशे कल्पना कर्तव्या। तथाचायमर्थः त्रीनंशान्पुत्रश्चाददीत चतुर्थंकन्येति। यदपि कैश्चिदुक्तं महानुपकारः पितृकरणंकन्यानामदत्तानांयेन जीवति पितरि तदिच्छया मूल्येनापि धनेन संस्क्रियन्तेम्हनेत्वंशहराइति तत्पुत्रेऽपि तुल्यवाचनिकैचार्येकेयंनोदना अथाभिप्रायःसमाचारउद्धारमात्रप्रयोजनंदानमित्याचारोदुर्बलःश्रुतेरिति। नवैकान्तिकः अनैकान्तिकत्वे च स्मृतितोयंनियमोयुक्तः यदपीदंकेनचिदुक्तमुद्धारमात्रप्रयोजनंदेयं न चतुर्थोभागोयथाश्रुतमितिच इदंवाच्यंनोद्वाहे परिमितधनदानमस्ति तस्य द्वादशशतंदद्यादिति वत् केवलमाच्छाद्यालङ्कृतांविवाहयेत् सौदायिकंवास्यादद्यादिति श्रूयते अलङ्कारत्वंसुवर्णमणिमुक्ताप्रवालादिरनेकधाभिन्नमिति तत्रनज्ञायते कियद्दातव्यंधनंकीदृशोवालङ्कारइत्यतश्च परिमाणार्थमेवेदंयुक्तंस्वादंशाच्चतुर्भागमिति नचास्मिन्नर्थे शास्त्रविरोधोयुक्तिविरोधोवा स्मृत्यन्तराण्येवमेव पक्षमुपोद्बलयन्ति। असंस्कृतास्तु संस्कार्याभ्रातृभिः पूर्वसंस्कृतैः ॥ भगिन्यश्चनिजादं-

* प्रकरणात् गम्यते is taken from the manuscript in the library of the Calcutta Sanscrit College.

श्राहृत्वांशं तु तुरीयकमिति तथा । आसंस्काराद्धरेद्भागं परतो बिभृयात् पतिरिति । अस्यायमर्थ: यत्र स्वल्पं धनमस्ति भ्रातुर्भगिन्याश्च न चतुर्भागे कन्याया भरणं भवति तत्र समभागं कन्या हरेदासंस्कारात् । परतस्तु स्मृत्यन्तराच्चतुर्भागं गृह्णीयात् स्वल्पमपि कथं तर्हि भरणमात्रं कुर्यादत उक्तं परतो बिभृयात् पतिरिति भ्रातृग्रहणं सोदर्यार्थं व्याचक्षते कोऽभिप्राय: भ्रातृशब्दो निरुपपद: सोदर्य एव मुख्यया वृत्त्या वर्त्तते पृथक् वचनं च लिङ्गं यस्यास्तु हि सोदर्यो नास्ति तस्या अयं दाय: सोदायिकश्च प्राप्नोति वैमात्रेयो यां * दास्यतीति चेन्नासति वचनान्तरे ददात्ययं भ्रातृशब्दा अनेकात्ममातृकाश्च गृह्यन्ते । पैतृष्वस्रेयादिषु तूपचाराद्वर्त्तत इति युक्तं एवमेकशब्दस्यानेकार्थत्वं नाभ्युपगतं भवति स्मृत्यन्तरसमाचारश्चेति श्रेयान् तत्र हि पठ्यते यच्छिष्टं पितृदायेभ्य: दत्त्वर्णं पैतृकमिति यत् पित्रा अवश्यदातव्यं तत् उद्धृत्य शेषं विभजेरन्नित्यर्थ: यथा ऋणापकरणादि व्याहृयते तद्वत् कन्यादानस्यावश्यकर्त्तव्यतोक्ता यथा कन्याभ्यश्च पितृद्रव्यमिति नात्र भगिनीशब्दो भ्रातृशब्दो वा श्रूयते यतस्त्वयमाशङ्का स्यात् । यत्तु पृथगिति तदेकैकस्यैव-समूह: भाग: सर्वाभ्य इत्येवमपि युज्यते यदप्युच्यते अददतां प्रत्यवायान्नतु हठाद्दाप्यन्ते यत उच्यते पतिता: स्युरदित्सव इति योऽहि यत्र यावत्यंशे स्वामी स हरेदित्युच्यते न पुनरनेनास्मै दातव्यमिति यथा वोच्यते भ्राता भ्रात्रे दद्यादिति चोच्यते न पुनरस्वामिभ्य: ॥ ११८ ॥

दास्यां वा दासदास्यां वा य: शूद्रस्य सुतो भवेत् ।

सोऽनुज्ञातो हरेदंशमिति धर्मो व्यवस्थित: ॥ ९—१७९ ॥

शूद्रस्यानूढायामनियुक्तायामपि जात: सुत एव । एवं यद्यपि दासस्य दासीत्यर्थोऽपि वचनात्तस्यां जातो न दासस्य दासस्वामिन. सोऽनुज्ञात: पित्रा सममंशमौरसेन हरेज्जीवितभागे क्रियमाणे अन्यथा वा यदि ब्रूयादेष व: समांश इति । यदा तु पिता नानुजानाति तत् स्मृत्यन्तरे पठितं ॥ जातोऽपि दास्यां शूद्रेण कामतोंऽशहरो भवेत् । कामतो यावन्तमंशमपि अनुजानाति ॥ मृते पितरि कुर्युस्तं भ्रातरस्त्वर्धभागिनं ॥ तं कुर्यु: स्वांशापेक्षया आत्मानो द्वौ द्वौ परिगृह्णीयुर्भागौ तस्मै कं दद्यु: । अभ्रातृको हरेत् सर्वं असत्स्वौरसेषु सर्वरिक्थं स एव हरेद्यदि दौहित्रो न स्यात् । सति तस्मिन्नौरसवत्कल्पना । दौहित्रस्यान्यस्याश्रुतत्वात्तस्य च प्रकृतत्वेन बुद्धौ सन्निवेशात् ब्राह्मणादीनां तु दासीसुता: प्रजीवनमात्रभाजो न रिक्थभाज इति स्थिति: ॥ १७९ ॥

* The word यां and the word यत्पित्रा to यथा कन्याभ्य are taken from the manuscript in the library of the Calcutta Sanscrit College.

पैतृकन्तु पिताद्रव्यमनवाप्तंयदाप्नुयात् ।

न तत्पुत्रैर्भजेत्सार्धमकामः स्वयमर्जितम् ॥ ९—२०९ ॥

मेधातिथिः । ग्रहणादन्यदर्थयन्पित्रा स्वयमर्जितः तदाकामोविभजनीयो-ऽधिकारप्राप्तैरपि पुत्रैः कःपुनर्जीवति पितरि पुत्राणांविभागकालउच्यते यदा तावत्स्वयंपिता पुत्रान्विभजते तदोक्तं मातुर्निवृत्तेरजसीति जीवतिचेच्छतीति तथा पितर्युपरतस्पृहे निवृत्ते वापिरमणइति अन्यथा तु यदैवप्राप्ताःपुत्राभवन्ति यतस्ते पितामहधनस्येशते । तथाचोक्तं ॥ भूर्यापितामहोपात्तानिबन्धोद्रव्यमेववा । तत्र स्यात्सदृशंस्वाम्यंपितुः पुत्रस्य चोभयोरिति ॥ सत्यपि च पुत्रस्य स्वाम्ये [यावद्-प्राप्तास्तावत्]' सर्वथा विशेषाभावात्सर्वेपितामहधनभाजः स्वत्वपूर्वकत्वाद्विभागस्य बन्धक्रयादिक्रियासु पितृधनंजातपुत्रेण नियोक्तव्यं योगकुटुंबभरणादौ तु विनियोगो-दर्शितः । आचारे सत्यपि चास्यामवस्थायांपुत्राणांस्वाम्ये पुत्रकामेन वापिभक्ताविति निन्दादर्शनाद्बलाद्विभाजयन्तः पापाइत्यनुमीयते यथाऽसत्कृत्प्रतिग्रहेणभवतिस्वाम्यं दोषस्तु पुरुषस्य तेनान्वयागतमितीदृशमपुद्रमेव अतः संभवत्युपायान्तरे न पितार्थनीयः अधर्मोहि तथास्यात् । स्वयमर्जितमपि धनमधिकारप्राप्तान्गुणवतः पुत्रान् ज्ञात्वा विभक्तमेव । उक्तंच वयसि स्थितः पिता पुत्रान्विभजेत् ज्येष्ठंश्रेष्ठांशेनेतरान्समेरंशैरिति । नचैतत्पितामहधनविषयं । नहि तत्र पिता ज्येष्ठस्याधिकांशदानाय प्रभवति तुल्यत्वादुभयोः स्वाम्यस्य । यत्विदं न्यूनाधिकविभक्तानांधर्म्यः पितृकृतःस्मृतइति ॥ तत्पितामहेपिस्वल्पया मात्रयेच्छन्ति यत्र न परिपूर्णभागद्वयंगृहीतंस्वयमर्जितविषये ह्यपवादएव स्यात् ॥ २०९ ॥

अविद्यानान्तु सर्वेषामीहातश्चेद्धनंभवेत् ।

समस्तत्र विभागः स्यादपित्र्यइति धारणा ॥ ९—२०५ ॥

अविद्याकृषिवाणिज्यराजोपसेवादि तत्र ईषन्न्यूनाधिकभावोनगणयितव्यः तत्रापि यदि केनचिदपि बह्वर्जितं तदाऽप्येव विभागता ज्येष्ठस्य तु ज्येष्ठांशनिषेधार्थंवचनं ईषदाधिक्ये तु सर्वेषांसमांशकल्पना अपित्र्य ऽपि हेतुवचनादनपत्यधनस्याप्येषएव विधिः ॥ २०५ ॥

विद्याधनन्तु यद्यस्य तत्तस्यैव धनंभवेत् ।

मैत्रमौद्वाहिकंचैव माधुपर्किकमेव च ॥ ९—२०६ ॥

विद्ययाअध्यापनादिना शिल्पकौशलेन वा तथा मित्रादर्जितमौद्वाहिकंचैव माधुप-र्किकमार्त्विज्येन यदाप्येतदपि विद्याधनंभवति तथापि जायमानेन निमित्तेनोपादीयमा-नत्वाद्भेदेन व्यपदिश्यते श्वशुरगृहलब्धमौद्वाहिकमपरे उद्वाहनिमित्तेन यतसल्लभ्यते ॥२०६

अनुपघ्नन्पितृद्रव्यं श्रमेण यदुपार्जितम् ।
स्वयमीहितलब्धंतन्नाकामोदातुमर्हति ॥ ९—२०८ ॥

विद्यानिमित्तस्य स्वयमर्जितस्यादानमुक्तं अनेन व्यतिरिक्तस्य कृष्यादिलब्धस्या-दातव्यतोच्यते ननुचायमेव श्लोकोनवक्तव्यः स्वयमीहितेन स्वयंचेष्टया यल्लब्धंतन्ना-कामोदातुमर्हतीति किंविद्याधनादिश्लोकेन उच्यते मन्त्रे विवाहादौ न सर्वस्य स्वयमीहोपपत्तिरितिभेदेन व्यपदेशः ॥ २०८ ॥

ऊर्ध्वंविभागाज्जातस्तु पित्र्यमेव हरेद्धनम् ।
संसृष्टास्तेन वा येस्युर्विभजेत स तैःसह ॥ ९—२१६ ॥

विभागोत्तरकालंपित्रायद्विभागेस्वयंगृहीतंद्वावंशौप्रतिपद्येते तदेव सत्यां पितुरिच्छायां ग्रहीतव्यं पितुरूर्ध्वं वा न तत्र भ्रातृभिर्वाच्यं किमित्ययंद्वावंशौ गृह्णातीति अथ च नास्ति पितुरिच्छा तदा समंच स्वसमोऽस्य भागउद्धर्तव्यः पितुरूर्ध्वंसंसृष्टास्तेषामेव सपैतृकोंशस्तदुल्यंदद्यादपरेषांस्वांशं जातस्यचमृतस्यचेति जातस्य संसृष्टिनएव दद्युः पितुरूर्ध्वंतदीयमंशंच तएवमेव विभक्ताःसहइत्यनयानुमुद्रा भगिन्याश्चाप्रसवान्नैव विभागोस्तीतिवसिष्टेन दर्शितम् ॥ २१६ ॥

सोदर्याविभजेरंस्तंसमेत्य सहिताः समम् ।
भ्रातरोये च संसृष्टाभगिन्यश्च सनाभयः ॥ ९—२१२ ॥

सोदर्याभ्रातरोयेस्युःसंसृष्टास्ते गृह्णीयुः । भगिन्यश्च सनाभयः सोदर्याअपुत्रा-स्ताहि सनाभिव्यपदेश्याः प्रवृत्ताःपुनःपतिगोत्रभावमनुभवन्तीति न भ्रातृणांसनाभयः येच संसृष्टाइति च शब्दोभगिनीसमुच्चिनोतीतिव्यमाशङ्काकर्तव्या । सोदर्या-गृह्णीयुर्येच भ्रातरःसंसृष्टाइति तथासत्यसोदर्याणामपि संसृष्टानांभागः प्रसज्येत सन्त्येव सोदर्याअसंसृष्टाः संसृष्टाश्च सोदर्यायत्र सन्ति तत्रोभयोरपि विभागेन विभागंगृह्णीयुः नचेदंविरुध्येत । अन्योदर्यस्तु संसृष्टी नान्योदर्यधनंहरेत् । असं-सृष्टोपिचादद्यात्सोदर्योनान्यमातृकः ॥ अस्यायमर्थः सापत्नोभ्राता सत्यपि संसृष्टित्वे न गृह्णाति यदा सोदर्योऽसंसृष्टोऽपि विद्यते सोदर्याणामभावेन संसृष्टःसएव नान्यः सत्यपि सोदर्यत्वे । तदुक्तं ॥ संसृष्टिनस्तु संसृष्टीसोदर्यस्य तुसोदरइति ॥ यदा तु सोदराएव सन्ति तदा येरेव सापत्नेःसंसृष्टस्तएव गृह्णीयुर्नत्वितरे । सोदर्य-विभक्तानांसहवसतांमहानिकटभावसत्यपि सान्निध्यं विशेषकार्यसामान्योत्यविभक्तानामपि विद्यायतइत्याहुः तेन विभक्तानामप्यन्यतरप्रमेयसोदर्यएव गृह्णीयान्नास्य भागः परिलुप्यते नचेतत्सोदनीयंनैवास्य तदानींभागव्यस्थितःपरलोकोवा चिन्त्यते यतउक्तं स्वत्पन्नेवाच्यः स्वामीति । धनीभ्रातो हि जीवतीरिति ॥ २१२ ॥

HARADATTA.

EXTRACTS FROM THE UJJVALA COMMENTARY ON APASTAMBA 2-6-14

PARTITION OF HERITAGE.

1 Next comes the Partition of Heritage. "By one property &c." (1): it is meant that having satisfied the eldest son by one *i e*, some principal item of property, such as a cow, the father should, while living, divide his wealth among his sons equally, for among themselves they bear a common designation, ancestral and self acquired property also (should be divided), excluding the impotent and others (*i. e*, the insane and the outcaste) The mention of Kliba and others is for indicating those that are born blind and others So says Manu(2). If the blind and the rest have children, they are partakers of shares. (The same rule applies to) the insane and the outcaste. Because of the want of means of livelihood, the impotent and the rest should be maintained.

Next the time for partition, should be ascertained from other Smritis Here Narada says: (See Narada XIII. 3). (2) When the sons attain capacity and desire for performing religious practices separately, that also is time for partition as mentioned by Manu (3) in the text "therefore are separate performances good &c" (Manu IX, 111). The words 'while living' are for showing that the good rule is that he should partition while living, otherwise the mention of actions while not living becomes meaningless. In another Smrit it is mentioned that in self-acquired property there may be unequal partition according to father's pleasure. That is not right law, is Apastamba's position. The share of the wife is also not mentioned. His own share becomes hers is what is meant. He says that there is no partition between husband

(1) Apastamba 2-6-14 for translation see Ch. 4, Sec. 3 of Vol. I.
(2) Manu Ch. 9, V 101 for translation see Ch. 1, Sec. 3 of Vol. I.
(3) Narada Ch. 13, V 3 for translation see Ch. 4, Sec. 3 of Vol. I.

and wife. Some say that the father gets two shares from the text that the father keeps two shares for himself while partitioning. This also is not Apastamba's position. As the sons with their wives get one share (each) so the share of the father is one. Or the equality of the shares of the sons (is indicated). There is no fault if the father's share is greater. Here Harita says: "Father is the like the principal receptacle in the sacrifice offered when the new crops ripen; the sons are the minor receptacles. When (his substance) is poured out, he takes from the others." After partition, is the parents are in want of maintenance, they may take from the shares of the sons. This concludes the subject of partition during father's life-time.

2. Next is mentioned the devolution of the wealth of a man on his decease. "On default of son" &c., (is the text) By the mention of the words 'on default of sons' (is meant that) when there are sons, they alone take equally without distinction. There is a distinction mentioned in Narada Smriti "What is left after paying the father's debts shall be divided by the brothers in order that the father may not continue a debtor" Katyayana also says "At the time of partition all the debts incurred for the family by the brother, uncle and mother should be paid by the heirs". On this Yajnavalkya says: 'On partition after father's death, the mother also takes an equal share.' It is also said, the mother should live with the sons. Manu also says: "the father protects in childhood, the husband in youth and the son in old age; a woman never deserves independence." (Manu IX. 3).

Similarly on the death of the mother, the property obtained by her from her husband's family or self-acquired is taken equally by her sons and unmarried daughters. Vrihaspati says: "Stridhana belongs to the children; the daughter, if unmarried, takes a share but if married, takes only a small part as a token of respect." Property obtained from the father's family is taken by the unmarried daughters alone. Manu says: "Mother's separate property falls to the share of the maiden daughters" After them, the married daughters and

the sons take. Manu's text is: "On the death of the mother all the uterine brothers and sisters take her wealth."

Here Vyasa says: "The senior brothers should out of the paternal wealth perform (the marriage and other) ceremonies of the brothers of whom these ceremonies have not been performed and also of the maiden sisters."

Here Vrihaspati speaks in respect to marriage of wives of different castes in order: "The Brahmin, Kshatriya, Vaisya and Sudra sons of a Brahmin take in due order four, three, two and one share. It is clearly stated in Manu's Smriti (V. 153) "Having divided all the property in ten shares the knower of the law should make proper division in the following manner: four shares are taken by the son of the Brahmin wife, three by the son of the Kshatriya wife, two by the son of the Vaisya wife and one by the son of the Sudra wife"

When the Brahman wife is barren or dead, the sons of the Kshatriya wife and the rest take three, two and one shares each in order. When there is only one son by one wife, he takes the whole, excepting the son of the Sudra wife As says Devala: "The only son of a married wife of inferior caste takes the entire wealth of the father But the Nishada only son takes one third of the father's wealth. The other two shares are taken by the Sakulya Sapinda, who performs the Sradh." Nishada here means the son of a Brahman by a Sudra wife. Vrihaspati says in respect of fields: "The land received as gift should not be given to the sons of Kshatriya wife and the rest. If given, on the death of the father, the son of the Brahman wife should recover it. The son by a Sudra wife of one of the three twice born castes does not deserve share of the land. The son of the same caste takes the whole." Yajnavalkya says: "the son born by a female slave of a Sudra takes a share at the option of the father. On the death of the father, his brothers should make him partaker of a half share."

On the question of wives (says) Vishnu: "the mother takes shares according to the shares of the sons."

The Commentator next cites the following texts about

the different kinds of sons Vishnu 18 S 34, Gautama 28 S 18, Manu 8 v 134, Yajnavalkya 2 v 127, Manu 9 v 132, Narada 13 v 17, Vasista 17 v 23, Manu 9 v 177 and Paithinasi *

Next cites Manu Ch 9, v 182. By this the adopted son is recognized When there are brother's sons one among them only should be adopted this is said

Next cites Manu 9 v 174, 176, 77, 169 and 171.†

All these various kinds of sons are of the same caste by the text of Yajnavalkya: "This rule is mentioned by me in respect of sons of the same caste"

Next cites Vishnu 15, S 17, Yajnavalkya 2, v 132, Manu 9 v 184, and Devala and other texts §

Vasista says. if after taking an adopted son an Aurasa son is born, the former takes a fourth share In the face of these texts, when there are sons what Apastamba said before *i. e*, that these the Aurasa sons alone have relation to works and get the wealth, should be understood as prohibitive of the partaking of equal shares by Kshetraja and other sons, when there are sons by the lawfully wedded wife

Next about impartible property Cites Manu Ch 9 v 208, (1) Katyayana, (2) Vyasa, (3) Yajnavalkya, (4) Manu, (5) Vyasa, (6) and other texts about self acquired property ‡

This concludes the subject of partition among sons

When there are no sons, the nearest Sapinda of the deceased takes the inheritance This is connected with the following. Those (ancestors) beginning with the fourth are partakers of *lepa*, those beginning with the father are partakers of the *pinda*. The seventh is the giver of Pinda to them, Sapinda relationship extends to seven persons" This the definition of Sapinda relationship Among them the nearest takes. The widow should be maintained by the Sapindas who take the wealth this is Apastamba's position There is the text of Veda · "therefore are women without organs and no heirs." Cites Manu IX 18 (7).

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* † § All these texts and their translations are to be found in Vol. I, Ch. 5 These are omitted here as the Commentator does not discuss them

‡ The texts (1) to (6) and their translations are to be found in Vol. I, Ch. 4. Sec 4. These are omitted for reasons mentioned above.

(7) For translation. See Vol. I, Ch. 2, Sec. 5.

When there are no Sapindas, says Vrihaspati: "Except in the case of Brahmins, the King should give maintenance to the widows; this is the rule of partition. For their food should be assigned a *prostha* of rice with fuel every afternoon and one cloth purchased for three Panas every three months. This has been called the wealth of widows in respect of chaste women What is left after setting apart property sufficient for their raiment, food and for paying the washerman, should be made over to the kinsmen" Vyasa says: "The wealth of women extends to two thousand, whatever has been given by the husband let her take that at pleasure." Two thousand (here means) of Panas This is the wealth of widows and no more This is when there is a great deal of wealth. Out of apprehension that the kinsmen may not protect the widows proceeds the text: "the widow and daughters take &c." (Yajnavalkya II v 135).

The texts about widow's inheriting should be thus understood. Gautama says that the widow takes a share equally with the Sapindas: "The wealth of the childless man is taken by Sapindas, Sagotras and Samanprabaras and the widow also" The meaning of this is that the wealth of the childless man is taken by the Sapindas according to nearness of relationship, failing them, by Sagotras and failing the latter, by Samanprabaras "By the widow also" is meant that the Sapindas take with the widow Therefore the widow takes one share with them From this also (follows the text) "on partition after the death of the father, the mother takes an equal share" (Yajnavalkya II, V 123). The position that the widow takes with the Sapindas seems to us to be right.

Here some say that when there are father and uterine brother, the uterine brother takes So says Sankha: "the wealth of the sonless man goes to the brother, failing him mother and father take or the eldest widow." Devala says: "then the uterine brother shall divide the heritage of a sonless person or the daughters of the same caste or the surviving father, half brother of the same caste, the mother and the widow according to the order mentioned, failing them those belonging

to the same family living together." Yajnavalkya says: "The wealth of reunited coparcener is given to the after born son or taken when dead by the reunited coparcener and of the uterine brother by the uterine brother; reunited halfbrother may take the succession but not a halfbrother not reunited: but one not reunited may take but not the reunited brother born of a different mother." Because of the use of the word born of the same mother in this text, in the text "the widow and the daughters &c." the word brother may mean one born of a different mother and because of the exceeding nearness of relationship, the father takes: this is the position of the Acharya Apastamba. Failing the father, the uterine brother; failing him, the sons of the latter; failing them, the brother born of different mothers; failing them the paternal uncle &c., take. The females, mother and the rest, obtain only maintenance.

On failure of Sapindas, the Acharya takes the inheritance; failing him the disciple. Such a person having taken should spend it in works of merit like digging of tanks &c. By the word Ba (or) is meant, or enjoy it

The text says: "or the daughter takes the inheritance:" Some say this contemplates the case when there is failure of sons. Others say this refers to her taking after the persons mentioned.

By the use of the word 'all' in the text, it is meant (that the king takes) in default of Bandhus and Sagotras.

(Cites here the texts about the preferential share of the eldest and says:)

Because the text about the eldest son taking alone is only an Anuvada and not a Bidhi, therefore all the sons who are virtuous inherit. He who spends the wealth unrighteously, even if eldest, should be made shareless; on partition during father's life-time no share should be given him and the brother also (should give him no share) on partition after father's death By the use of the word *api* (even) the superiority of the eldest is shown

By laying down that while living the father should divide

his wealth among his sons, the wife's share is not shown The reason of it is this. "There is no division between husband and wife." This is clear. The meaning of "marriage &c." is that wealth is for works, and that the wife has no right to separate work; all religious works should be performed by the husband together with the wife. Therefore there is no necessity for separate property.

In the matter of the fruit of good works and also in heaven &c., there is unity from the Vedic Mantra · "they (the husband and the wife) attain to imperishable light in heaven, &c." There is also unity in acquisition of property. There the husband earns, the wife spends at home; Yoga and Kshema are dependent on both Therefore there is unity in acquisition of property.

When the husband is away from home, the wife inmaking occasional Naimittika gifts like giving seat and water commits no theft, say those that know the law. If the property belongs to the husband alone then there will be theft. By the use of the word Naimittika, is meant that otherwise there may be theft Thus there is a distinction between husband and wife, even if there is community of wealth. The husband may spend as he likes but the wife may spend only as much as is mentioned above. The husband does not require the permission of the wife to spend self-acquired property because he is independent. He is independent like the king in his kingdom. Therefore there is no apprehension of theft by husband of property in respect of the wife. Patala 6, Kandika 14.

COMMENTARY ON APASTAMBA 2-6-13, S 10 ON ADOPTION.

By the use of the word gift (in the text prohibiting gift and purchase of children) sale also is meant, because of the common character of giving up. By purchase is also meant acceptance of gift because of the common character of acceptance. Gift, acceptance, sale and purchase of children should not be made. Of the twelve kinds of sons, because of the texts of Manu, the Datta and Krita should not be considered

as prohibited altogether. But the prohibitory texts abou them refer to eldest son or the only son or females So say Vasista: "*the eldest should not be given or accepted, for he must remain to continue the line of the ancestors Let a woman neither give nor receive a son except with her husband's permission He who desires to adopt a son shall* assemble his kinsmen, announce his intention to the king make burnt offerings in the middle of the house, reciting the Vyahitris and take (as a son) a not remote kinsman, just the nearest among his relatives" In the Viswajit sacrifice when there is gift of the whole property, the children should not be given away like cattle, &c Sale is prohibited under all circumstances That is mentioned among minor sins by Yajnavalkya · "Nastikya, &c," (III, 236) In the Vahrich Brahmana, we read in the story of Shunashepha "on receiving the eldest son, he said &c" On the subject of (the prohibition of sale and gift of) child refers to the eldest son as his symbol

आपस्तम्बीय धर्मसूत्रस्य हरदत्तकृतोज्ज्वलावृत्तौ दायभागप्रकरणम् ।

१। अथ दायविभागः* ॥ एकधनेनेत्यादि ॥ एकेन प्रधानेन केनचिद्धनेन गवादिना ज्येष्ठं पुत्रं तोषयित्वा तुष्टं कृत्वा जीवन्नेव पुत्रेभ्यो दायं विभजेत्समम्। आत्मना परस्परं च तेषां सामान्याभिधानात्। क्रमागतं स्वयमर्जितं च। क्लीबादीन्वर्जयित्वा। क्लीबादिग्रहणं च जात्यन्धादीनामुपलक्षणम्। यथाह मनुः [९,२०१]।

अनंशौ क्लीबपतितौ जात्यन्धबधिरौ तथा।

उन्मत्तजडमूकाश्च ये च केचिन्निरिन्द्रिया इति॥

अन्धादीनां पुत्रनप्तारो ते लंशहराः। एवमुन्मत्तपतितौ कृत्वानिमित्ते क्लीबादयस्तु भर्तव्याः। अथ विभागकालः स्मृत्यन्तरवशादवगन्तव्यः। अत्र नारदः। [१३,३]।

मातुर्निवृत्ते रजसि प्रत्तासु भगिनीषु च।

निवृत्ते चापि रमणात्पितर्युपरतस्पृह इति॥

यदा च पुत्राणां पृथग्धर्मानुष्ठाने शक्तिग्रहे भवतः सोऽपि कालस्तस्माद्धर्म्या पृथक्क्रियेति [मनु० ९,१११] दर्शनात्। जीवन्निति वचनं जीवन्नेवावश्यं पुत्रान्विभजेदेष धर्म इति प्रतिपादनार्थम्। अन्यथा तदनर्थकमजीवतोऽप्रसङ्गात्। स्मृत्यन्तरे तु स्वयमर्जिते पितुरिच्छया विषमविभागो दर्शितः। न स धर्म इत्याचार्यस्य पक्षः। भार्याया अप्यंशो न दर्शितः। आत्मन एवांशस्तस्या अपीति मन्यते। वक्ष्यति जायापत्योर्न विभागो विद्यत इति। केचित्तु पितुर्द्विवंशावित्याहुः। द्वावंशौ प्रतिपद्येत विभजन्नात्मनः पितेति दर्शनात्। अयमप्याचार्यस्य पक्षो न भवति। यथा पुत्राणामेक एवांशः सभार्याणां तथा पितुरपीति। अथवा पुत्राणामिवांशसाम्यम्। आत्मनस्त्वाधिक्येऽपि न दोषः। अत्र हारीतः। पितर्यायत्ताः पुत्रा इतरे ग्रहाः। यदायत्ताः स्कन्देदुपदस्य दितरेभ्योऽपि गृह्णीयादिति। विभागादूर्ध्वं पित्रोर्जीवनाभावे पुत्रभागेभ्यो ग्राह्यमित्युक्तं भवति। इति जीवद्विभागः॥

२। अथ मृते कुटुम्बिनि तद्धनगतिमाह ॥ पुत्राभावे य इति ॥ पुत्राभाव इति वचनात्सत्सु पुत्रेषु त एव गृह्णीयुः। अविशेषात्समम्। तत्र नारदीये विशेषः। यच्छिष्टं पितुर्दायेभ्यो दत्त्वर्णं पैतृकं च यत्। भ्रातृभिस्तद्विभक्तव्यमृणी स्यान्न यथा पितेति॥ कात्यायनस्तु। भ्रात्रा पितृव्यमातृभ्यां कुटुम्बार्थमृणं कृतम्। विभागकाले

* आपस्तम्बीयधर्मसूत्रस्य ष९: पटलः चतुर्दशी कण्डिका।

देयं तद्रिक्थिभिः सर्वमेवत्विति। अत्र याज्ञवल्क्यः [२,१२३]। पितुरूर्ध्वं विभजतां माताप्यंशं समं हरेदिति। अत्र चोक्तम्। पुत्रैरेव सह वृत्तिः स्यादिति। तथा च मनुः [९,३]। पिता रक्षति कौमारे भर्ता रक्षति यौवने। पुत्रस्तु स्थविरे भावे न स्त्री स्वातन्त्र्यमर्हतीति॥ एव मातुरप्यभावे तद्धनं भर्तृकुललब्धं स्वयमर्जितं च पुत्रा अप्रत्ताश्च दुहितरः समग्रहीयुः। स्त्रीधनं तदपत्यानां दुहिता च तदंशिनी। अप्रत्ता चेत्समूढा तु लभते मानमात्रकमिति बृहस्पतिः। पितृकुललब्धं चाप्रत्ता एव दुहितरः। मातुस्तु यौतकं यः स्यात्कुमारीभाग एव स इति मनुः [९,१३१]। अथ प्रत्ता दुहितरः पुत्राश्च॥ जनन्यां संस्थितायां तु समं सर्वे सहोदराः। भजेरन्मातृकं रिक्थं भगिन्यश्च सनाभय इति मानवमेव [९,१९२]॥ अत्र व्यासः। असंस्कृतास्तु ये तत्र पैतृकादेव ते धनात्। संस्कार्या भ्रातृभिर्ज्येष्ठैः कन्यकाश्च यथाविधीति। अत्र क्रमविवाहे बृहस्पतिः। ब्रह्मक्षत्रिय-विट्शूद्रा विप्रोत्पन्नास्त्वनुक्रमात्। चतुस्त्रिद्व्येकभागेन भजेयुस्ते यथाक्रमम्॥ मानवे च स्पष्टमुक्तम् [९,१५३]॥ सर्वं वा रिक्थजातं तद्दशधा प्रविभज्य तु। सम्यग्विभागं कुर्वीत विधिनानेन धर्मवित्॥ चतुरोंऽशान्हरेद्विप्रस्त्रीनंशान्क्षत्रियासुतः। वैश्यापुत्रो हरेद्द्व्यंशमंशं शूद्रासुतो हरेत्॥ इति। यस्य तु ब्राह्मणी वन्ध्या मृता वा तस्य क्षत्रियादिसुतास्त्रिद्व्येकभागाः। तत्र त्वेकस्यामप्येकः पुत्रः स सर्वमेव हरेत्। शूद्रापुत्रवर्जम्। यथाह देवलः। आनुलोम्येकपुत्रस्तु पितुः सर्वस्वभाग्भवेत्। निषाद एकपुत्रस्तु विप्रस्वस्य तृतीयभाक्॥ द्वौ सकुल्यः सपिण्डो वा स्वधादाता स्वयं हरेदिति। निषादः पारशवः। एतद्विषये बृहस्पतिः। न प्रतिग्रहभूर्देया क्षत्रियादिसुताय वै। यद्यप्यस्य पिता दद्यान्मृते विप्रासुतो हरेत्॥ शूद्री द्विजातिभिर्जातो न भूमेर्भागमर्हति। सजातावाप्नुयात्सर्वमिति धर्मो व्यवस्थितः॥ याज्ञवल्क्यः [२, १३३-१३४]। जातोऽपि दास्यां शूद्रेण कामतोंऽशहरो भवेत्। मृते पितरि कुर्युस्तं भ्रातरस्त्वर्धभागिनमिति॥ भार्याविषये विष्णुः [१८,३४] मातरः पुत्रभागानुसारिभागहारिण्य इति। अत्र। औरसपुत्रिकाबीजक्षेत्रजा पुत्रिकासुतः। पौनर्भवश्च कानीनः सहोढो गूढसंभवः॥ दत्तः क्रीतः स्वयंदत्तः कृत्रिमश्चापविद्धकः। यत्र क्वचोत्पादितश्च पुत्रा व्या दश पञ्च च॥ अनेनैव क्रमेणैषां पूर्वाभावे परः परः। पिण्डदोंऽशहरश्चेति प्रायेण स्मृतिषु स्थितिः। तत्रौरसो धर्मपत्नीजः सवर्णापूर्वशास्त्रविहितायामिति पूर्वमुक्तः। गौतमः [२८,१८]। पितोत्सृजेत्पुत्रिकामनपत्योऽग्निं प्रजापतिं चेष्ट्वास्मदर्थमपत्यमिति संवाद्येति। बृहस्पतिः। एक एवौरसः पित्र्ये धने स्वामी प्रकीर्तितः। तत्तुल्या पुत्रिका प्रोक्ता भर्तव्यास्त्वितरे

स्मृता: ॥ अत्र मनु: [८, १३४]। पुत्रिकायां कृतायां तु यदि पुत्रोऽनुजायते। समस्तत्र विभाग: स्याज्ज्येष्ठता नास्ति हि स्त्रिया इति। याज्ञवल्क्य: [२,१२७]। अपुत्रेण परक्षेत्रे नियोगोत्पादित: सुत:। उभयोरप्यसौ रिक्थी पिण्डदाता च धर्मत इति ॥ अयमेवोत्पादयितुर्बीजज: क्षेत्रज: क्षेत्रिणस्तु। बृहस्पति:। पुत्रोऽथ पुत्रिकापुत्र: स्वर्गप्राप्तिकरावुभौ। रिक्थे पिण्डाम्बुदाने च समौ संपरिकीर्तिताविति ॥ काश्यप:। सप्त पौनर्भवा:कन्या वर्जनीया कुलाधमा:। वाचा दत्ता मनोदत्ता कृतकौतुकमङ्गला। उदकं स्पर्शिता या च या च पाणिगृहीतिका। अग्निं परिगता या च पुनर्भूप्रसवा च येति ॥ कात्यायन:। क्लीबं विहाय पतितं या पुनर्लभते पतिम्। तस्यां पौनर्भवो जातो व्यक्तमुत्पादकस्य स इति ॥ मनु: [९,१३२]। पितृवेश्मनि या कन्या यं पुत्रं जनयेद्रह:। तं कानीनं वदेन्नाम्ना वोढु: कन्यासमुद्भव इति ॥ नारद: [१३, १७]। कानीनश्च सहोढश्च गूढायां यश्च जायते। तेषां वोढा पिता ज्ञेयस्ते च भागहरा: पितुरिति ॥ वसिष्ठ: [१७,२३]। अप्रत्ता दुहिता यस्य पुत्रं विन्देत तुल्यत:। पौत्री मातामहस्तेन दद्यात्पिण्डं हरेद्धनमिति ॥ अनूढायामेव मृतायां मातामहस्य पौत्र:। अन्यथा वोढु: पुत्र:। मनु: [९,१७३]। या गर्भिणी संस्क्रियते ज्ञाताज्ञातापि वा सती। वोढु: स गर्भो भवति सहोढ इति चोच्यते। उत्पद्यते गृहे यस्य न च ज्ञायेत कस्य स:। स गृहे गूढमुत्पन्नस्तस्य स्याद्यस्य तल्पज: ॥ दत्त: पूर्वमेवोक्त:। पैठीनसि:। अथ दत्तक्रीतकृत्रिमपुत्रिकापुत्रा: परपरिग्रहेणार्षेयेण जातास्तेऽसहृत-कुलीना: द्व्यामुष्यायणा भवन्तीति। मनु: [९,१८२]। भ्रातृणामेकजातानामेकश्चेत्पुत्रवान्भवेत्। सर्वे ते तेन पुत्रेण पुत्रिणो मनुरब्रवीत् ॥ इति दत्तस्वीकार:। भ्रातृपुत्रेषु सत्सु तेष्वेवैको ग्राह्य इत्युक्तम् ॥ [मनु० ९,१७४,१७६, ७७,१६९,१७१] क्रीणीयाद्यस्तु पुत्रार्थं मातापित्रोर्यमन्तिकात्। स क्रीतक: सुतस्तस्य सदृशोऽसदृशोऽपि वा ॥ मातापितृविहीनो यस्त्यक्तो वा स्यादकारणात्। आत्मानं स्पर्शयेद्यस्य स्वयंदत्तस्तु स स्मृत: ॥ सदृशं तु प्रकुर्वीत गुणदोषविवर्जितम्। पुत्रं पुत्रगुणैर्युक्तं स विज्ञेयस्तु कृत्रिम: ॥ मातापितृभ्यामुत्सृष्टं तयोरन्यतरेण वा। यं पुत्रं प्रतिगृह्णीयादपविद्ध: स उच्यत इति ॥ सर्व एते सजातीया:। सजातीयेष्वयं प्रोक्तस्तनयेषु मया विधिरिति याज्ञवल्क्यवचनात् [२,१३३]। विष्णु: (१५,२७)। यत्र क्वचनोत्पादितश्च द्वादश इति। याज्ञवल्क्य: (२,१३२)। पिण्डदोंऽशहरश्चैषां पूर्वाभावे पर: पर इति। मनु: (९,१८४)। श्रेयस: श्रेयसोऽभावे पापीयान्रिक्थमर्हतीति। नारद: (१३,४९)। क्रमादेते प्रवर्तन्ते मृते पितरि तद्धने।

ज्यायसो ज्यायसीऽभावे जघन्यस्तदवाप्नुयादिति ॥ देवल: । सर्वेष्वनौरसस्यैते पुत्रा दायहरा: स्मृता: । औरसे पुनरुत्पन्ने तेषु ज्यैष्ठ्यं न तिष्ठति ॥ तेषां सवर्णा ये पुत्रास्ते तृतीयांशभागिन: । शेषास्तमुपजीवेयुर्ग्रासाच्छादनसंभृता इति ॥ मनु: (९,१६४)। षष्ठं तु क्षेत्रजस्यांशं प्रदद्यात्पैतृकाद्धनात् । औरसो विभजन्दायं पित्र्यं पञ्चममेव वेति ॥ बृहस्पति: । क्षेत्रजाद्या: सुतास्त्वन्ये पञ्चषट्सप्तभागिन इति । हारीत: । विभजिष्यमाण एकविंशं कानीनाय दद्याद्विंशं पौनर्भवाय एकोनविंशं द्व्यामुष्यायणायाष्टादशं क्षेत्रजाय सप्तदशं पुत्रिकापुत्रायेतरानौरसायेति । वसिष्ठ: । पुत्रं प्रतिगृहीष्यन्निति प्रक्रम्य तस्मिंश्चेत्प्रतिगृहीत औरस उत्पद्येत चतुर्थभागभागिति (व० ध० शा० १५,९)। एवमेतेषु शास्त्रेषु विद्यमानेषु पुत्रेषु हराचार्येण पूर्वमुक्तं तेषां कर्मभि: सम्बन्धो दायेनाव्यतिक्रमश्चेति (१३,१-२) तद्गर्भपक्षीणं एवं सति क्षेत्रजादीनां समांशहरत्वप्रतिषेधपरं वेदितव्यम ॥ अथाविभाज्यम् ॥ अत्र मनु: (९,२०८)। अनुपघ्नन्पितृद्रव्यं श्रमेण यदुपार्जितम् । स्वयमीहितलब्धं तन्नाकामो दातुमर्हतीति ॥ कात्यायन: । नाविद्यानां तु वैद्येन देयं विद्याधनात्क्वचित् । समविद्याधिकानां तु देयं वैद्येन तद्धनम् ॥ परभक्तप्रदानेन प्राप्तविद्यो यदान्यत: । तया प्राप्तं तु विधिना विद्याप्राप्तं तदुच्यत इति ॥ व्यास: । पितामहपितृभ्यां च दत्तं मात्रा च यद्भवेत् । तस्य तन्नापहर्तव्यं शौर्यभार्याधनं तथेति ॥ याज्ञवल्क्य: (२,११९)। क्रमादभ्यागतं द्रव्यं हृतमभ्युद्धरेत य: । दायादेभ्यो न तद्दद्याद्विद्यया लब्धमेव च ॥ (मनु: ९,२००)। पत्यौ जीवति य: स्त्रीभिरलङ्कारो धृतो भवेत् । न तं भजेरन्दायादा भजमाना: पतन्ति ते ॥ व्यास: । साधारणं समाश्रित्य यत्किञ्चिद्वाहनायुधम् । शौर्यादिनाप्नोति धनं भ्रातरस्तत्र भागिन: ॥ तस्य भागद्वयं देयं शेषास्तु समभागिन इति ॥ इति पुत्रदायविभाग: । तदभावे तु मृतस्य य: प्रत्यासन्न: सपिण्ड: स दायं हरेतेति वक्ष्यमाणेन सम्बन्ध: । लेपभाजश्चतुर्थाद्या: पित्राद्या: पिण्डभागिन: । सप्तम: पिण्डदस्तेषां साप्तिण्ड्यं साप्तपौरुषमिति सपिण्डलक्षणम् । तेषु यो य: प्रत्यासन्न: स गृह्णीयादिति ॥ भार्या तु रिक्थग्राहिण: सपिण्डा रक्षेयुरित्याचार्यपक्ष: । श्रूयते हि (तैत्ति० सं० ६,५,८,२)। तस्मात्स्त्रियो निरिन्द्रिया अदायादीरिति ॥ मनुरपि । निरिन्द्रिया अदायादा: स्त्रियो नित्यमिति श्रुतिरिति । अत्र सपिण्डाद्यभावे बृहस्पति: । अन्यत्र ब्राह्मणात्किन्तु राजा धर्मपरायण: । तत्स्त्रीणां जीवनं दद्यादेष दायविधि: स्मृत: ॥ अन्नार्थं तण्डुल-प्रस्थमपराह्णे तु सेन्धनम् । वसनं त्रिपणक्रीतं देयमेकं त्रिमासत: ॥ एतावदेव साध्वीनां चोदितं विधवाधनम् । वसनस्याशनस्यैव तथैव रजकस्य च । धनं

व्यपोह्य यच्छिष्टं दायादानां प्रकल्पयेत्। धूमावसानिकं श्राद्धं सन्ध्यायां स्नानतत्परा। वसनाशनवासांसि विगणय्य धनं मृत इति॥ व्यासः। द्विसाहस्रः परो दायः स्त्रियै देयो धनस्य तु। यच्च भर्त्रा धनं दत्तं यथाकाममवाप्नुयात्॥ पणानां द्वे सहस्रे तु यस्य परिमाणं स द्विसाहस्रः। एष एव परो दायः स्त्रियो नाधिक इति॥ एतत्प्रभृते धने ज्ञातयश्च न रक्षेयुरिति शङ्कायाम्। पत्नी दुहितरश्चैवेत्यादि (या० ध० शा० २,१३५)। यानि पत्न्याः दायप्राप्तिपराणि तान्यपि एवमेव द्रष्टव्यानि॥ गौतमस्तु पुत्राभावे पत्न्याः सपिण्डादिभिः समांशग्रहणमाह (२८,२१)। पिण्डगोत्रर्षिसम्बन्धा रिक्थं भजेरन् स्त्री चानपत्यस्येति। अस्यार्थः। अनपत्यस्य रिक्थं पिण्डसम्बन्धाः सपिण्डाः प्रत्यासन्नक्रमेण भजेरन्। तदभावे गोत्रसम्बन्धाः सगोत्राः। तदभाव ऋषिसम्बन्धाः समानप्रवराः स्त्री च पत्नी च। अत्र स्त्रिया सह सपिण्डा भजेरन्। तदा स्त्री सह तैरेकमंशं गृह्णीयात्। ततश्च पितुरूर्ध्वं विभजतां माताप्यंशं समं हरेदिति (या० ध० शा० २,१२३)। सपिण्डादिभिः सह ग्रहणमुक्तमिति वयमप्येतमेव पक्षं रोचयामहे॥ अत्र पितरि भ्रातरि च सोदर्ये जीवति सोदर्यो भ्राता गृह्णीयादित्येके। तथा च शङ्खः। अपुत्रस्य स्वर्यातस्य भ्रातृगामि द्रव्यम्। तदभावे मातापितरौ लभेयाताम्। पत्नी वा ज्येष्ठेति॥ देवलः। ततो दायमपुत्रस्य विभजेरन्सहोदराः। कुल्या दुहितरो वापि ध्रियमाणः पितापि च॥ सवर्णा भ्रातरो माता भार्या चेति यथाक्रममिति॥ याज्ञवल्क्यः (२,१३८-९)। संसृष्टिनस्तु संसृष्टी सोदरस्य तु सोदरः। दद्याच्चापहरेच्चांशं जातस्य च मृतस्य च। अन्योदर्यस्तु संसृष्टी नान्योदर्यो धनं हरेत्। असंसृष्टापि चादद्यात्संसृष्टो नान्यमातृजः॥ अत्र सोदर्य इति विशेषवचनात्पत्नी दुहितरश्चेत्यत्र भ्रातृग्रहणं भिन्नोदरविषयमपि प्रत्यासत्त्यतिशयात्पितेत्याचार्यस्य पक्षः। तदभावे भ्राता सोदर्यः। तदभावे तत्पुत्राः। तदभावे भिन्नोदराः तदभावे पितृव्य इत्यादि द्रष्टव्यम्॥ मात्रादयोऽपि स्त्रियो जीवनमात्रं लभेरन्निति॥

३। तदभावे सपिण्डाभाव आचार्यो दायं हरेत्। तस्याप्यभावेऽन्तेवासी हरेत्। हृत्वा तदर्थं धर्मकृत्येषु तटाकखननादिषूपयोजयेत्। वाशक्त्या स्वयं वोपयुञ्जीत॥

४। दुहिता वा दायं हरेत्। पुत्राभाव इत्येके। अनन्तरोक्तविषय इत्यन्ये॥

५। सर्वद्रव्याणामशूनां सगोत्राणां चाप्यभावे॥

१४। यस्मादेतावनुवादौ न कस्यचिद्विधायकौ तस्मात्ते धर्मयुक्ताः पुत्राः सर्व एव ते भागिनः॥

१५। यस्तु ज्येष्ठोऽप्यधर्मेण द्रव्याणि प्रतिपादयति विनियुङ्क्ते तमभागं कुर्वीत जीवद्विभागेपि तस्मै भागं न दद्यात्। ऊर्ध्वं विभागेऽपि भ्रातरः। अपिशब्दात्किमुतान्यमिति ज्येष्ठस्य प्राधान्यं ख्याप्यते ॥

१६-१७। जीवत्पुत्रेभ्य इत्यनेन भार्याया भागो न दर्शितः। तत्र कारणमाह ॥ जायापत्योरिति ॥ स्पष्टम् ॥ तस्मात् ॥ पाणीत्यादि ॥ कर्मार्थं द्रव्यं जायायाश्च न पृथक् कर्मस्वधिकारः। किन्तु सहभावेन यस्त्वया धर्मश्च कर्तव्यः सोऽनया सहेति वचनात्। तत्र किं पृथग्द्रव्येणेति ॥

१८-१९। पुण्यफलेषु स्वर्गादिष्वपि तथा सहत्वमेव। दिवि ज्योतिरजरमारभेतामित्यादिभ्यो मन्त्रलिङ्गेभ्यः। द्रव्यपरिग्रहेषु द्रव्यार्जनेष्वपि तथा सहत्वमेव। तत्र पतिरर्जयति जाया गृहं निर्वहतीति योगक्षेमावुभयायत्ताविति द्रव्यपरिग्रहेपि सहत्वम्। तदेवोपपादयति ॥

२०। हि यस्माद्भर्तुः प्रवासे सति नैमित्तिके दाने ह्विन्दत्याणि दद्यादित्यादिके दाने कृते भार्याया न स्तेयमुपदिशन्ति धर्मज्ञाः। यदि भर्तुरेव द्रव्यं स्यादेव स्तेयम्। नैमित्तिक इति वचनाद्विषयान्तरे स्तेयं भवत्येव। एतदेव द्रव्यसाधारण्येपि दम्पत्योर्वैषम्यं यत्पतिर्यथेष्टं विनियुङ्क्ते जाया त्वेतावदेवेति। न च पत्युः स्वयमर्जितस्य विनियोगे जायाया अनुमत्यपेक्षा स्वतन्त्रत्वात्। स्वतन्त्रो ह्यसौ यथा राजा राष्ट्रे। अत एव भार्यायाः स्तेयशङ्का न भर्तुः ॥

प५क१३सू१०। दानग्रहणेन विक्रयोऽपि गृह्यते त्यागसाम्यात्। क्रयधर्म इति च प्रतिग्रहस्यापि ग्रहणं धर्मग्रहणात्स्वीकारसाम्याच्च। अपत्यस्य दानप्रतिग्रहक्रयविक्रया न कर्तव्याः। द्वादशविधेषु पुत्रेषु दत्तक्रीतयोरपि मन्वादिभिः पठितत्वान्नायं सामान्येन प्रतिषेधः। किन्तु ज्येष्ठपुत्रविषय एकपुत्रविषयः स्त्रीविषयो वा। तथा च वसिष्ठः। न ज्येष्ठं पुत्रं दद्यात्प्रतिगृह्णीयाद्वा। स हि सन्तानाय पूर्वेषाम्। न स्त्री पुत्रं दद्यात्प्रतिगृह्णीयाद्वान्यत्रानुज्ञानाद्भर्तुः। पुत्रं प्रतिग्रहीष्यन्बन्धूनाहूय राज्ञे निवेद्य निवेशनस्य मध्ये व्याहृतिभिर्हुत्वादूरबान्धवं संनिकृष्टमेव प्रतिगृह्णीयादिति। विश्वजिद्यागे च सर्वस्वदाने गवादिवदपत्यं न देयम्। विक्रयस्तु सर्वत्र निषिद्धः। तत्रोपपातकेषु याज्ञवल्क्य (३,२३६) आह। नास्तिक्यमित्यादि। बह्वृचब्राह्मणेऽपि शुनःशेपाख्याने दृश्यते (ऐ० ब्रा० ७, १५) स ज्येष्ठं पुत्रं निगृह्णान उवाचेत्यादि। पत्रप्रकरणे पत्यशब्दोपादानमपि ज्येष्ठपुत्रविषयं तस्य लिङ्गम्।

THE

MITAKSHARA.

(ON PARTITION AND INHERITANCE.)

CHAPTER I.

SECTION I.

Definition of Inheritance, and of Partition—Disquisition on Property.

1 Subject proposed

1. Evidence, human and divine, has been thus explained with [its various] distinctions; the partition of heritage is now propounded by the image of holiness (Yajnavalkya II 116.)

2 Inheritance defined

2. Here the term heritage (dáya) signifies that wealth, which becomes the property of another, solely by reason of relation to the owner.

3 It is lineal, or collateral

3. It is of two sorts: unobstructed (Apratibandha,) or liable to obstruction (Sapratibandha.) The wealth of the father or of the paternal grandfather, becomes the property of his sons or of his grandsons, in right of their being his sons or grandsons and that is an inheritance not liable to obstruction. But property devolves on parents (or uncles,) brothers and the rest, upon the demise of the owner, if there be no male issue.

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1. Evidence human and divine.] Intending to expound with great care the chapter on inheritance, the author shows by this verse the connexion of the first and second volumes of the book. Subodhini.

The image of holiness.] Yajnavalkya, bearing the title of contemplative saint (Yogeesvara) and here termed the image of holiness (Yogamurti.) Balam-Bhatta.

2. Solely by reason of relation.] "Solely" excludes any other cause, such as purchase or the like. "Relation," or the relative condition of parent and offspring and so forth, must be understood of that other person, a son or kinsman, with reference to the owner of the wealth. Balam-Bhatta.

The meaning is this. Wealth, which becomes the property of another, (as a son or other person bearing relation,) in right of the relation of offspring and parent or the like, which he bears to his father or other relative who is owner of that wealth, is signified by the term heritage. Subodhini.

3. In right of their being his sons or grandsons.] A son and a grandson have property in the wealth of a father and of a paternal grandfather, without supposition of any other cause but themselves. Theirs consequently is inheritance not subject to obstruction. Subodhini.

and thus the actual existence of a son and the survival of the owner are impediments to the succession; and, on their ceasing, the property devolves [on the successor] in right of his being uncle or brother. This is an inheritance subject to obstruction. The same holds good in respect of their sons and other [descendants.]

4. Partition defined.

4. Partition (vibhaga) is the adjustment of divers rights regarding the whole, by distributing them on particular portions of the aggregate.

5. Narada describes this head of action.

5. Entertaining the same opinion, Narada says, "Where a division of the paternal estate is instituted by sons, that becomes a topic of litigation called by the wise partition of heritage."* "Paternal" here implies any relation, which is a cause of property. "By sons" indicates propinquity in general.

6. Topics included in it. What is property?

6. The points to be explained under this [head of inheritance†], are, at what time, how, and by whom, a partition is to be made, of what. The time, the manner, and the persons, when, in which, and by whom, it may be made, will be explained in the course of interpreting stanzas on those subjects respectively. What that is, of which a partition takes place, is here considered.

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Property devolves on parents, &c.] Visvesvara-Bhatta reads "parent brothers and the rest" (pitri-bhratradinam) and expounds it 'both parent as well as brothers and so forth.' Balam-Bhatta writes and interpret 'an uncle and a brother or the like,' (pitrivya-bhratradinam.) but notice the other reading. Both are countenanced by different copies of the text.

The same holds good in respect of their sons, &c.] Here the sons or other descendants of the son and grandson are intended. The meaning is this: if relatives of the owner be forthcoming, the succession of one, whose relation to the owner was immediate, is inheritance not liable to obstruction; but the succession of one, whose relation to the owner was mediate or remote is inheritance subject to obstruction, if immediate relatives exist. Subodhini.

In respect of their sons, &c.] Meaning sons and other descendants of sons and grandsons, as well as of uncles and the rest. If relatives of the owner be forthcoming, the succession of one, whose relation was immediate, comes under the first sort; or mediate, under the second. Balam-Bhatta.

4. Partition is the adjustment of divers rights.] The adjustment, or special allotment severally of two or more rights, vested in sons or others, relative to the whole undivided estate, by referring or applying those rights to parcels or particular portions of the aggregate, is what the word 'partition' signifies. Subodhini and Balam-Bhatta.

5. "When division of the paternal estate," &c.] Considerable variations occur in this text as cited by different authors. It is here read paitrasya, and Balam-Bhatta states the etymology of paitra signifying 'of or belonging to a father.' He censures the reading in the Kalpataru, pitryasya, as ungrammatical. It is read in the Madanaratna,

* Narada, 13, 1.

† Bálam-Bhatta.

7. Does property arise from partition? or does partition of pre-existent property take place? Under this [head of discussion,*] proprietary right is itself necessarily explained: [and the question is] Whether property be deduced from the sacred institutes alone, or from other [and temporal] proof.

7. Does it arise from partition, or pre-exist? and is it inferred from spiritual or temporal proof?

8. [It is alleged, that] the inferring of property from the sacred code alone is right, on account of the text of Gautama "An owner is by inheritance, purchase, partition, seizure,† or finding.‡ Acceptance is for a Bráhmana an additional mode; conquest for a Kshatriya; gain for a Vaisya or Súdra" For if property were deducible from other proof this text would not be pertinent So the precept, ("A Bráhmana, who seeks to obtain any thing, even by sacrificing or by instructing, from the hand of a man, who had taken what was not given to him, is considered precisely as a thief,"§) which directs the punishment of such as obtain valuables, by officiating at religious rites, or by other similar means, from a wrongdoer who has

8. Property supposed to be spiritual.

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pitradeh 'of a father, &c' Other variations occur upon other terms of the text which is here read tanayah for putrah; kalpyate for prakalpyate; and vyavahara-padam for tad-vivada padam. The last is noticed by the commentator Balam-Bhatta. A disagreement also occurs respecting the pronoun yatra, for which some substitute yas tu, and others yat tu. See Jimuta-vahana C. 1 § 2.

Paternal here implies, &c] The meaning, here expressed, is that the word "paternal," as it stands in Narada's text, intends what has been termed [by the author in his definition of heritage,] 'relation to the owner', a reason of property. Subodhini.

It intends any relation to the owner, as before mentioned, which becomes a cause of property, and it consequently includes the paternal grandfather and other [predecessors.] The author accordingly observes, that 'by sons" indicates propinquity in general,' meaning any immediate relative. Balam-Bhatta

7. Does property arise from partition] Here the inquiry is twofold: for the substance, which is to be divided, is the subject of disquisition, and the doubt is, whether partition be of property, or of what is not property. For the sake of this, another question is considered: Is partition the cause of property, or not? If it be not the cause of property, but birth alone be so, then, since property is by birth, it follows that partition is of property. This is one disquisition, which the author proposes by the question "does property arise from partition, &c" Another inquiry relates to the subject of property. The author introduces it, saying "proprietary right is explained." Here the right of property is the subject of discussion and the doubt is whether it results from the holy institute only, or is demonstrable by other and temporal proof. That question the author proposes. Subodhini.

The substance which is to be divided, is the subject of the first disquisition. Here the question is, whether partition of what is not property be the cause of proprietary right. and thus right, arising from partition,

*Bálam-Bhatta. † Apprehensio, vel occupatio. ‡ Inventio. § Manu 8 340.

taken what was not given to him, would be irrelevant, if properperty were temporal. Moreover, were property a worldly matter, one could not say. "My property has been wrongfully taken by him;" for it would belong to the taker Or, [if it be objected that] the property of another was seized by this man, and it therefore does not become the property of the usurper; [the answer is,] then no doubt could exist, whether it appertain to one or to the other, any more than in regard to the species, whether gold, silver, or the like. Therefore property is a result of holy institutes exclusively.

9 To this the answer is property is temporal only, for it effects transactions relative to worldly purposes, just as rice or similar substances do

9. But it is temporal

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would not be antecedent to it, since partition, which becomes the cause of that right, had not yet taken place Or is partition not the reason of property, but birth alone? and thus, since proprietary right thence arose partition would be of property. This is one disquisition, which the author proposes: "Does property arise, &c." He introduces a second questions which serves towards the solution of the first Balam-Bhatta.

8. It is alleged that the inferring of property from the sacred code alone is right.] The author here states the opponent's argument. Subodhini.

On account of the text of Gautama] If property were deducible from other, that is from temporal, proof, this passage of Gautama's institutes would not be partinent, since it would be useless if it were a mere repetition of what was otherwise known. Balam-Bhatta

For it would belong, &c.] The thing would belong in the taker since that relation would be alone the subject of perception. Balam-Bhatta.

Therefore property is a result of holy institutes exclusively.] If property be worldly it would follow, that, when the goods of one man have been seized by another, should the person, who has been despoiled, affirm concerning them, "my property has been taken away by this man," a doubt would not, upon hearing that arise in the minds of the judges,, whether it be the property of one, or of the other As no doubt exists regarding the species, whether gold or something else when gold, silver, or any other worldly object, is inspected, so none would exist in regard to property, for [according to the supposition] it is a worldly matter. But doubt does arise. Therefore it cannot be affirmed, that the usurper has no property. Or [the meaning may be this] the opponent, who contends that it is not the property of the captor, because that, which has been seized by him, is another's property, must be asked. Is there or is there not, proof, that property is not vested in the captor? [The opponent] impeaches the first part of the alternative · "then no doubt could exist, &c." The notion is this, As no doubt arises concerning the species, when there is demonstration that it is gold or silver, so likewise, in the proposed case, no doubt could arise. Nor is the second part of the alternative admissible. for, if no evidence arise, it could not be affirmed that the captor has not property Omitting, however, this part of the reasoning the author closes the adversary's argument, concluding that property is deduced solely from the sacred code. Subodhini and Balam-Bhatta

9. Property is temporal only.] The author proves his proposition, that property is secular, by logical deduction. Property is worldly for it effects transactions relative to worldly purposes, Whatever does effect

but the consecrated fire and the like, deducible from the sacred institutes, do not give effect to actions relative to secular purposes. [It is asked] does not a consecrated fire effect the boiling of food, and so, of the rest? [The answer is] No; for it is not as such, that the consecrated flame operates the boiling of food, but as a fire perceptible to the senses: and so, in other cases. But, here, it is not through its visible form, either gold or the like, that the purchase of a thing is effected, but through property only. That, which is not a person's property in a thing, does not give effect to his transfer of it by sale or the like. Besides, the use of property is seen also among inhabitants of barbarous countries, who are unacquainted with the practice directed in the sacred code: for purchase, sale, and similar transactions are observed among them.

10 This doctrine is confirmed by the Mimansa.

Statement of the opponent's opinion.

Objection.

10 Moreover, such as are conversant with the science of reasoning, deem regulated means of acquisition a matter of popular recognition. In the third clause of the Lipsa Sutra,* the venerable author (*Guru*†) has stated the adverse opinion, after [obviating] an objection to it, that, 'if restrictions, relative to the acquisition of goods, regard the religious ceremony, there could be no property, since proprietary right is not temporal;' [by showing, that] 'the efficacy of acceptance and other modes of acquisition in constituting proprie-

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temporal ends, is temporal as rice and other similar substances. Such too is property. Therefore, it is temporal. But whatever is not worldly promotes not secular purposes as a consecrated fire and other spiritual matters. Subodhini.

For it is not as such that consecrated flame, &c.] A hollowed fire has two characters the spiritual one of consecration, and the worldly one of combustion. It effects the boiling of food in its worldly capacity as fire, not in its spiritual one as consecrated. For, if it did so in its last mentioned capacity, a secular fire, wanting the spiritual character of consecration, would not effect the boiling of food. Therefore the objection does not hold. Then, in the proposed case, gold or other valuable would effect the secular purpose of sale and purchase, in its character of gold or the like, not in that of property. The author replies to that objection "It is not through its visible form &c." Besides, the use of property is observable among barbarians, to whom the practice enjoined by the sacred institutes is unknown and, since that cannot be otherwise accounted for, there is evidence of property being secular. Subodhini.

10 In the third clause of the Lipsa Sutra.] In the first clause (varnaka) the distinction between religious and personal purposes is examined. In the second, the inquiry is whether the milking of kine and similar preparatives be relative to the person or to the act of religion. In the

* Mimansa, 4. 1. 2. 3.

† The word (Guru) appears in the original and is inserted by me. All words in Italics should be considered as appearing in the original but left out by Colebrooke and inserted by me.—Ed.

tary right, is matter of popular recognition. Does it not follow, 'if the mode of acquiring the goods concern the religious ceremony, there is no right of property, and consequently no celebration of a sacrifice?' [Answer] 'It is a blunder of any one who affirms, that acquisition does not produce a proprietary right; since this is a contradiction in terms.' Accordingly, the author, having again acknowledged property to be a popular notion, when he states the demonstrated doctrine, proceeds to explain the purpose of the disquisition in this manner. Therefore a breach of the restriction affects the person, not the religious ceremony.' and the meaning of this passage is thus expounded * 'If restrictions, respecting the acquisition of chattels, regard the religious ceremony, its celebration would be perfect, with such property only, as was acquired consistently with those rules; and not so, if performed with wealth obtained by infringing them; and consequently, according to the adverse opinion, the fault would not affect the man, if he deviated from the rule. but according to the demonstrated conclusion, since the restriction, regarding acquisitions, affects the persons, the performance of the religious ceremony is complete, even with property acquired by a breach of the rule, and it is an offence on the part of a man, because he has violated

Answer.

The right doctrine asserted.

Purpose of the disquisition explained.

Deduction.

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third, the question examined is whether restrictions, noticed in primeval revelation, as to the means of acquisition, (such as these, 'let a Brahmana acquire wealth by acceptance or the like, a Kshatriya by victory and so forth, and a Vaisya by agriculture, &c') must be taken as relative to the person or to the religious ceremony [performed by him.] Subodhini and Balam-Bhatta

The position of the adversary is, that, injunctions regarding the means of acquisition concern the religious ceremony, through the medium of the goods used by the agent, for, unless that be admitted, the precept would be nugatory, because there would be no one whom it affected. Subodhini.

The meaning is this: As in the case of an acquisition of goods under a precept relative to sacrifice, such as this "purchase the moon-plant,"† the injunction regarding the acquisition of goods concerns the religious ceremony; so does the injunction respecting acceptance and other means of acquisition. Balam-Bhatta.

The author states an objection to this position of the adversary. The objection is this: the question, considered in the third clause of the Lipsá-sútra, is whether injunctions regarding acquisition of goods concern the religious ceremony or the person. The opponent's position is, that they concern the ceremony. That is not congruous For, if the injunctions, regarding acquisition of goods, concern the religious ceremony, no,

* By the commentator on the Mímansá Prabhakara surnamed Guru.

† Soma, Asclepias aceda Roxb.

and obligatory rule.' It is consequently acknowledged, that even what is gained by infringing restrictions, is property: because, otherwise, there would be no completion of a religious ceremony.

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property would arise, since property being spiritual would have no worldly cause to produce it; and no other means are shown in scripture; and the injunctions regarding acquisition, being relative to the ceremony, are not relative to any thing else. thus, for want of property, the religious rites would not be complete with that which was not property; and consequently the position, that injunctions regarding acquisition of goods, concern the act of religion, is incongruous Subodhini.

He revives the position by answering that objection; and the notion is this. the injunctions, regarding acceptance and the like, accomplish property; and they will become relative to the religious ceremony through the medium of goods adapted to the performance of the ceremony: as the husking of grain, which effects the removal of the chaff, concerns the religious ceremony through the medium of clean rice which is adapted to the ceremony. But the wise consider property as a worldly matter [resulting from birth] like the relation of a son to his father Consequently there is no failure in the completion of religious rites [as supposed in the objection.]

Admitting, that, because injunctions regarding acqusition concern the religious ceremony, the acquisition likewise must relate to the ceremony does it not follow, since it relates not to anything else, that there is no such thing as property? and would not a failure of the religious ceremony ensue? [Wherefore the adversary's position is erroneous.] The author states the objection and confutes it with derision. Some one has blundered affirming that acquisition does not produce property, for it is a contradiction in terms.' Such is the construction of the sentence; and the meaning is this Acquisition, which is an accident of the acquirer, is a relation between two objects [the owner and his own] like that of mother and son. Consequently, there can be no acquisition without a thing to be acquired; and it is a contradiction in terms to say 'acquisition does not produce a proprietary right,' as it is to affirm 'my mother is a barren woman' Subodhini and Balam-Bhatta

The demonstrated conclusion is, that, since valuables, being intended for every purpose, must be relative to the person, restrictions, regarding the acquisition of them, must concern the person also. Balam-Bhatta.

The purpose of the disquisition under this topic of inquiry is stated. It is interpreted by the venerable author (Prabhákara-Guru) The implied sense is this. According to the adversary's position, there is no offence affecting the person, in violating the injunction But the religious ceremony is not duly accomplished with goods acquired by a breach of the injunction It is the religious ceremony, therefore, which is affected. But, according to the demonstrated doctrine, since the restrictions concern the person, the offence is his if he infringe the rule; and the religious ceremony is not affected. Subodhini.

The author, by way of closing the argument. states the result as applicable to the subject proposed. It is acknowledged by the maintainer of the right doctrine, that even what is gained by infringing the rule, much more what is acquired by other means, is property. Balam-Bhatta.

Otherwise, that is, if a right of property in wealth acquired even by infringing the rule, be not admitted; then, since no property is temporal because the restrictions concern the religious ceremony [and that, which is thus acquired, does so likewise,] therefore the means of living would be unattainable, since no temporal property could exist; and consequently there could be no religious ceremony, for there would be nobody to perform it Subodhini and Balam-Bhatta.

11 An objection obviated.

11. It should not be alleged, that even what is obtained by robbery and other nefarious means, would be property. For proprietary right in such instances is not recognised by the world; and it disagrees with received practice.

12 Certain means of acquisition are restricted to particular tribes, for spiritual reasons

12. Thus, since property, obtained by acceptance or any other [sufficient] means, is established to be temporal; the acceptance of alms, as well as other [prescribed] modes for a Brahmana, conquest and similar means for a Kshatriya, husbandry and the like for a Vaisya, and service and the rest for a Sudra, are propounded as restrictions intended for spiritual purposes; and inheritance and other modes are stated as means common to all. "An owner is by inheritance, purchase, partition, seizure or finding"*

Other means are common to all.

13. Gautama's enumeration of the modes of acquisition expounded.

13. Unobstructed heritage is here denominated "inheritance." "Purchase" is well known. "Partition" intends heritage subject to obstruction "Occupation" or seizure is the appropriation of water, grass, wood and the like not previously appertaining to any other [person as owner.†] "Finding" is the discovery of a hidden treasure or the like. 'If these reasons exist, the person is owner' If they take place, he becomes proprietor. 'For a Brahmana, that which is obtained by acceptance or the like, is additional,' not common [to all the tribes]. "Additional" is understood in the subsequent sentence: 'for a Kshatriya, what is obtained by victory, or by amercement or the like, is peculiar.' In the next sentence, "additional" is again understood. what is gained or earned by agriculture, keeping of cattle, [traffic,] and so forth, is for a Vaisya peculiar; and so is, for a Sudra, that which is earned in the form of wages, by obedience to

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11. It should not be alleged, that even what is obtained by robbery.] If property be acknowledged in that which is acquired by infringing the restriction, might it not be supposed, that even what is obtained by robbery and other nefarious means, becomes property? The author obviates that objection It does not become so He removes the inconsequence of the reason. For the employment of it as such in sale and other transactions is not familiarly seen in practice Bálam-Bhatta.

12 Thus since property obtained by acceptance, &c] Property being thus proved to be temporal, the author successively refutes the several arguments before cited in support of the notion, that it is not temporal Bálam-Bhatta.

Common to all.] Including even the mixed classes Bálam-Bhatta.

13. If these reasons exist, the person is owner.] If such reasons are known [to exist,] the owner is known. Subodhini and Bálam-Bhatta.

* Gautama. 10. 39 already cited in § 8 † Bálam-Bhatta.

the regenerate and by similar means.' Thus likewise, among the various causes of property which are familiar to mankind, whatever has been stated as peculiar to certain mixed classes in the direct or inverse order of the tribes, (as the driving of horses, which is the profession of the Sútas* and so forth,) is indicated by the word "earned" (nirvishta) : for all such acquisitions assume the form of wages or hire ; and the noun (nirvésa) is exhibited in the Trikandi† as signifying wages (*and enjoyment.*)

14. Another objection obviated

14. As for the precept respecting the succession of the widow and the daughter, &c.,‡ the declaration [of the order of succession,] even in that text is intended to prevent mistake, (although the right of property be a matter familiar to the world,) where many persons might [but for that declaration] be supposed entitled to share the heritage by reason of their affinity to the late owner. The whole is therefore unexceptionable.

15. The argument refuted on which the first supposition was grounded.

15. As for the remark, that, if property were temporal it could not be said "my property has been taken away by him;"§ that is not accurate, for a doubt respecting the proprietary right does arise through a doubt concerning the purchase, or other transaction, which is the cause of that right.

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Both commentaries read jñátéshu jñáyaté svámí, 'such reasons existing, an owner exists.' But copies of the text exhibit játéshu jáyaté svámí 'Such reasons being known, the owner is known.'

Additional.] The meaning of the term is 'excellent.' Balam-bhatta.

14 As for the precept respecting the succession. The author obviates an objection, that, if property be a worldly matter, the import of the text here cited is inconsistent, as it is provided by precept, that the widow and certain other persons shall inherit on the owner's demise. Subodhiní and Balam-Bhatta.

The declaration of the order of succession.] Bálam-bhatta notices as a variation in the reading, the words here supplied ; krama-smaranam 'declaration of the order of succession,' instead of smaranam 'declaration '

15. As for the remark, that if property were temporal] The sense is this in such a case, the proposition 'another's property has been taken by him' is simply apprehended from the affirmation of the complainant. But that is apprehension, not proof. Accordingly, if it be contradicted, a doubt arises respecting the cause of right. Thus, if the complainant declare, "my goods have been taken by him,' and the defendant affirm the contrary, a doubt arises in the minds of umpires, whether the thing were unjustly seized by that man, or were fairly obtained by purchase or other title · and so, from a doubt respecting a purchase or other cause of property, arises a doubt concerning property which is the effect Subodhini.

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* According to a text of Usanas, from which these words are taken.

† The dictionary of Amarasimha in three books (Kandas) The passage here cited occurs in the 3rd book of the Amarakosha. Ch. 4, v. 217.

‡ Vide infra C. 2, Sect. 1. § 1. § Vide § 8.

16. The purpose of the preceding disquisition is this. A text expresses, "When Brahmanas have acquired wealth by a blameable act, they are cleared by the abandonment of it, with prayer and rigid austerity"* Now, if property be deducible only from sacred ordinances, that, which has been obtained by accepting presents from an improper person, or by other means which are reprobated, would not be property, and consequently would not be partible among sons. But if it be a worldly matter, then even what is obtained by such means, is property, and may be divided among heirs; and the atonement abovementioned regards the acquirer only: but sons have the right by inheritance, and therefore no blame attaches to them, since Manu declares. "There are seven virtuous means of acquiring property: viz, inheritance, &c"†

16. Purpose of the disquisition explained.

Property, however acquired, is partible among the heirs of the acquirer.

17. Next, it is doubted whether property arise from partition, or the division be of an existent right.

17, The first question (§ 7) resumed.

18. Of these [positions], that of property arising from partition is right, since a man, to whom a son is born, is enjoined to maintain a holy fire: for, if property were vested by birth alone, the estate would be common to the son as soon as born; and the father would not be competent to maintain a sacrificial fire and perform other religious duties which are accomplished by the use of wealth

18. Property supposed to arise from partition

ANNOTATIONS.

16. The purpose of the preceding disquisition is this] Admitting property to be a worldly matter; still [its nature] seems to be an unfit [subject of inquiry] under the head of inheritance, since it matters not whether property be temporal or spiritual. Apprehending this objection the author proceeds to explain the purpose of the disquisition. Subodhini.

18. Is enjoined to maintain a holy fire.] For it is ordained by a passage of the Veda, "that he, who has a son born and who has black [not grey] hair, should consecrate a holy fire" and the meaning of that passage is this. one who has issue (for the term son implies issue in general; and whose hair is [yet] black, or who is in the prime of life; that is, who is capable; one, in short, who is qualified, must perform the consecration and maintenance of a holy fire.' Does not this relate to the consecration of sacrificial fires, not to the rise of property from partition? Anticipating this objection, he adds "if property were by birth &c" The meaning is this. 'if property arose from birth alone, a son would, even at the instant of his birth have ownership, and since the goods are thenceforward in common, the father would not be competent to the consecration of sacrificial fires and other religious acts (as funeral repasts, rites on the birth of children, and other indispensable cremonies,) which must be performed by the husband and wife, and which can only be accomplished by expenditure of wealth.' Subodhini and Balam-Bhatta.

* The text is apparently referred to Manu by the commentator Balam-Bhatta: but it is not found in Manu's institutes. A passage of similar import does, however, occur. Ch. 10. v. 111.

† Manu, 10. 115.

19. Likewise the prohibition of a division of that, which is obtained from the liberality of the father previous to separation, would not be pertinent since no partition of it can be supposed, for it has been given by consent of all parties. (But Nárada does propound such a prohibition) "Excepting what is gained by valour, the wealth of a wife, and what is acquired by science, which are three sorts of property exempt from partition; and any favour conferred by a father."*

19. The supposition, that it is vested by birth, disagrees with a passage of Narada exempting from partition the father's donations

20. So the text concerning an affectionate gift: "What has been given by an affectionate husband to his wife, she may consume as she pleases, when he is dead, or may give it away, excepting immoveable property;"† would not be pertinent, if property were vested by birth alone. Nor is it right to connect the words "excepting immoveable property" with the terms "what has been given" [in the text last cited,] for that would be a forced construction by connexion of disjoined terms

20. And with one which recognises a husband's donations to his wife.

21. As for the text: "The father is master of the gems, pearls and corals, and of all [other moveable property:] but neither the father, nor the grandfather, is so of the whole immoveable estate," and this other passage: "By favour of the father, clothes and ornaments are used but immoveable property may not be consumed, even with the father's indulgence," which passages forbid a gift of immoveable property through favour. they both relate to immoveables which have descended from the paternal grandfather. When the grandfather dies, his effects become the common pro-

21. The exception of immoveables does not imply property by birth.

Passages, excepting them, regard the ancestral estate

ANNOTATIONS.

20. The text.....would not be pertinent, if property were vested by birth] For, if property were vested at the instant of birth, no such gift could be made, since he would be incompetent even with the consent of the child, and one cannot give away what is common to others. Subodhini and Balam-Bhatta.

Nor is it right to connect, &c.] Is not the text, so far from being a contradiction to the right by birth actually founded on it? for the construction is this 'what has been given, excepting immoveable property, by an affectionate husband to his wife, she may consume as she pleases,

* Narada, 13. 6

† Vishnu according to a subsequent quotation (§ 25). But Narada cited by Jimuta-vahana (C. 4. Sect. 1. § 23.)

perty of the father and sons ; but it appears from this text alone, that the gems, pearls and other moveables belong exclusively to the father, while the immoveable estate remains common

22. Therefore property is not by birth, but by demise of the owner, or by partition. Accordingly [since the demise of the owner is a cause of property,*] there is no room for supposing, that a stranger could not be prevented from taking the effects because the property was vacant after the death of the father before partition So likewise, in the case of an only son, the estate becomes the property of the son by the father's decease; and does not require partition.

22. Property supposed to be by partition, or by demise of the owner.

23. To this the answer is: It has been shown, that property is a matter of popular recognition; and the right of sons and the rest, by birth, is most familiar to the world, as cannot be denied: but the term partition is generally understood to relate to effects belonging to several owners, and does not relate to that which appertains to another, nor to goods vacant or unowned For the text of Gautama expresses "Let ownership of wealth be taken by birth; as the venerable teachers direct"†

23 That supposition is wrong Property is vested by birth· as expressly declared by Gautama.

24. Moreover the text above cited "The father is master of the gems, pearls, &c." (§ 21) is pertinent on the supposition of a proprietary right vested by birth Nor is it right to affirm, that it relates to immoveables which have descended from the paternal grandfather: since the text ex-

24. The passage before cited (§ 21) does imply property by birth

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when he is dead ' thus, a right of property by birth being true in regard to immoveables, since the gift of them is forbidden ; and, by analogy, the same being true of other goods, a gift of wealth other than immoveables is permitted by the provision of the law why then should not this text be propounded? Apprehending that objection, he says "Nor is it right to connect, &c " The construction stated would be requisite: but it is not a proper one; for the style would be involved, if the construction connect disjoined terms. Subodhinî.

21 As for the text "The father is master of the gems &c"] Apprehending the objection, that, since a gift of immoveables through partial affection is forbidden by the plain construction of two other passages of law, birth and not partition is the cause of property, he obviates it. Subodhini

23. "Let ownership of wealth, &c."] 'By birth alone the heir may take the thing which is denominated ownership of wealth : as the venerable teachers hold.' Subodhini.

* Subodhini and Balam-Bhatta.

† Not found in Gautama's institutes.

presses "neither the father, nor the grandfather." This maxim, that the grandfather's own acquisition should not be given away while a son or grandson is living, indicates a proprietary interest by birth. As, according to the other opinion, the precious stones, pearls, cloths, ornaments and other effects, though inherited from the grandfather, belong to the father under the special provisions of the law; so, according to our opinion, the father has power, under the same text, to give away such effects, though acquired by his father There is no difference.

25. Another passage before cited (§ 20) relates to father's acquisitions

25. But the text of Vishnu(§ 20), which mentions a gift of immoveables bestowed through affection, must be interpreted as relating to property acquired by the father himself and given with the consent of his son and the rest: for, by the passages [above cited, as well as others not quoted,* viz] "The father is the master of the gems, pearls, &c." (§21), the fitness of any other but immoveables for an affectionate gift was certain

26 A preceding objection (§ 18) refuted

26 As for the alleged disqualification for religious duties which are prescribed by the Veda, and which require for their accomplishment the use of a wealth, (§ 18) sufficient power for such purposes is inferred from the cogency of the precept [which enjoins their performance].

27 Property is by birth but the father has power over moveables, and is controlled in respect of immoveables: as shown by passages of law.

27. Therefore it is a settled point, that property in the paternal or ancestral (grandpaternal)† estate is by birth, [although‡] the father have independent power in the disposal of effects other than immoveables for indispensable acts of duty and for purposes prescribed by text of law, as gifts through affection, support of the family, relief from distress, and so forth: but he is subject to the control of his sons and the rest, in regard to the immoveable estate, whether acquired by himself or inherited from his father or other predecessor; since it is

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Balam-bhatta notices a variation in the reading: artha-svamitvat, in the ablative case, instead of artha-svamitvam, in the nominative That reading is found in the Daya-tatva; and the text is there explained in an entirely different sense. See Jimuta-vahana, C. I. § 19.

* Balam-bhatta.

† The original is पैतामहे and its correct translation is grandpaternal. On this mistranslation of Colebrooke a series of decesions have been based Sec. 29 All. 667.—Ed.

‡ Balam-bhatta.

ordained: "Though immoveables or bipeds have been acquired by a man himself, a gift or sale of them should not be made without convening all the sons. They, who are born, and they who are yet unbegotten, and they who are still in the womb, require the means of support, no gift of sale should, therefore, be made."*

28. A further text authorizes sale, &c., by a single owner

28. An exception to it follows: "Even a single individual may conclude a donation, mortgage, or sale, of immoveable property, during a season of distress, for the sake of the family, and especially for pious purposes."†

29. Explanation of the text

29. The meaning of that text is thus: while the sons and grandsons are minors, and incapable of giving their consent to a gift and the like, or while brothers are so and continue unseparated; even one person, who is capable, may conclude a gift, hypothecation, or sale, of immoveable property, if a calamity affecting the whole family require it, or the support of the family render it necessary, or indispensable duties, such as the obsequies of the father or the like,, make it unavoidable.

30. Another passage expounded.

Consent of separated kinsmen tends to the facility of the transaction

30. The following passage: "Separated kinsmen, as those who are unseparated, are equal in respect of immoveables; for one has not power over the whole, to make a gift, sale or mortgage"‡ must be thus interpreted 'among unseparated kinsmen, the consent of all is indispensably requisite, because no one is fully empowered to make an alienation, since the estate is in common;' but, among separated kindred, the consent of all tends to the facility of the transaction, by obviating any future doubt, whether they be separate or united, it is not required, on account of any want of sufficient power, in the single owner, and the transaction is consequently valid even without the consent of separated kinsmen.

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27. "No gift or sale should be made"] The close of the passage is read otherwise by Raghunandana: "The dissipating of the means of support is censured,' vrittilopo vigarhitah, instead of na danan na cha vikrayah.

* Vyasa as cited in other compilations.

† Vrihaspati cited in the Ratnakara, &c.

‡ Vrihaspati as cited in the Ratnakara.

31. Like the consent of townsmen &c, required by another text.

31. In the text, which expresses, that "Land passes by six formalities; by consent of townsmen, of kinsmen, of neighbours, and of heirs, and by gift of gold and of water;" consent of townsmen is required for the publicity of the transaction, since it is provided, that "Acceptance of a gift, especially of land, should be public:" but the contract is not invalid without their consent. The approbation of neighbours serves to obviate any dispute concerning the boundary. The use of the consent of kinsmen and of heirs has been explained.

32. Gift of gold and water assimilates the sale to a gift of land

32. By gift of gold and of water] Since the sale of immoveables is forbidden by the text: ("In regard to the immovable estate, sale is not allowed; it may be mortgaged by consent of parties interested;" and since donation is praised (by the text). "Both he who accepts land, and he who gives it, are performers of a holy deed, and shall go to a region of bliss;"*) if a sale must be made, it should be conducted, for the transfer of immoveable property, in the form of a gift, delivering with it gold and water [to ratify the donation.)

33 A distinction regarding the right by birth will be noticed (Sect 5 § 3)

33. In respect of the right by birth to the estate paternal or ancestral (*grandpaternal*).† *With regard to the text "Land that has been acquired by the paternal grandfather,"* we shall mention or distinction under a subsequent text.‡ (Section 5 § 3)

SECTION II

Partition equable or unequal—Four periods of partition.—Provision for wives.—Exclusion of a son who has a competence.

1. Other topics resumed

Text of Yajnavalkya.

1 At what time, by whom, and how, partition may be made, will be next considered Explaining those points, the author says, "When the father makes a partition, let him separate his sons [from himself] at his pleasure, and either [dismiss] the eldest with the best share, or [if he choose] all may be equal sharers."||

* Brahma-vaivarta purana.

† Ancestral is a mistranslation by Colebrooke, it should be grandpaternal.—*Ed.*

‡ The words in Italics were left out by Colebrooke —*Ed.*

|| Yajnavalkya, 2, 115.

2. When a father wishes to make a partition, he may at his pleasure separate his children from himself, whether one, two or more sons.

2. Exposition of the passage.

3. No rule being suggested (for the will is unrestrained,) the author adds, by way of restriction, "he may separate (for this term is again understood) the eldest with the best share," the middlemost with a middle share, and the youngest with the worst share.

3 Distribution by the father may be unequal

4. This distribution of best and other portions is propounded by Manu: "The portion deducted for the eldest is the twentieth part of the heritage, with the best of all the chattels, for the middlemost, half of that; for the youngest, a quarter of it."*

4. Manu describes this distribution

5. The term "either" (§ 1) is relative to the subsequent alternative "or all may be equal sharers," that is, all, namely the eldest and the rest, should be made partakers of equal portions

5. Explanation of the close of the former text

6. This unequal distribution supposes property by himself acquired. But, if the wealth descended to him from his father, an unequal partition at his pleasure is not proper for equal ownership will be declared

6 The estate must have been acquired by him, else the rights are equal.

7. One period of partition is when the father desires separation, as expressed in the text "When the father makes a partition" (§ 1) Another period is while the father lives, but is indifferent to wealth and disinclined to pleasure, and the mother is incapable of bearing more sons; at which time a partition is admissible, at the option of sons, against the father's wish · as is shown by Narada, who premises partition subsequent to the demise of both parents ("Let sons regularly divide the wealth when the father is dead);"† and adds "Or when the mother is past child-bearing and the sisters are

7. Four periods of partition, 1st by the father's desire, 2nd on his retiring from worldly affairs · as is shown by Narada.

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2. Separate his children] Make them distinct and several by giving to them shares of the inheritance. Balam-Bhatta

7. One period of partition is when the father desires separation.] There are four periods of partition One is, while the father lives, if he desire partition Another is, when the mother ceases to be capable of bearing issue, and the father is not desirous of sexual intercourse and is indifferent to wealth, if his sons then require partition, though he do not wish it. Again another period is, while the mother is yet capable of bearing issue, and the father, though not consenting to partition, is old,

* Manu, 9. 112, Vide infra. Sect. 3. § 3. † Narada, 13. 2.

married, or when the father's sensual passions are extinguished."* Here the words "let sons regularly divide the wealth" are understood. Gautama likewise, having said: "After the demise of the father, let sons share his estates,"† states a second period, "Or when the mother is past child-bearing;"‡ and a third, "While the father lives, if he desire separation "§ So while the mother is capable of bearing more issue, a partition is admissible by the choice of the sons, though the father be unwilling, if he be addicted to vice or afflicted with a lasting disease. Sankha declares. "Partition of inheritance takes place without the father's wish, if he be old, disturbed in intellect, diseased "||

4th on account of his disqualification: as stated by Sankha.

8 Two sorts of partition at the pleasure of the father have been stated, namely, equal and unequal. The author adds a particular rule in the case of equal partition, "If he make the allotments equal, his wives, to whom no separate property has been given by the husband or the father-in-law, must be rendered partakers of like portions "¶

8 Provision for wives

Text of Yajnavalkya.

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or addicted to vicious courses, or afflicted with an incurable disease, if the sons then desire partition. The last period is, after the decease of the father. Visvesvara in the Madana-Parijata.

There are four periods of partition in the case of wealth acquired by the father. Visvesvara in the Subodhini.

Four periods of partition among sons have been stated by the author (Vijnanesvara,) which are compendiously exhibited in a twofold division by the contemplative saint (Yajnavalkya.) Here, three cases may occur under that of distribution during the life of the father: viz., with, or without, his desire for separation, the case of his not desiring it being also twofold, viz, 1st when the mother has ceased to be capable of bearing children and the father is disinclined to pleasure, &c. 2nd when the mother is not incapable of bearing issue, but the father is disqualified by vicious habits or the like Subodhini.

The doctrine of the eastern writers [Jimuta-vahana, &c.] who maintain, that two periods only are admissible, the volition of the father and his demise, and not any third period. ¶ and that the text, relative to the mother's incapacity for bearing more issue, regards the estate of the paternal grandfather or other ancestor, is refuted. Balam-bhatta.

We hold that while the father survives and is worthy of retaining uncontrolled power, his will alone is the cause of partition. If he be unworthy of such power, in consequence of degradation, or of retirement from the world, or the like, the son's will is likewise a cause of partition. But, in the case of his demise, the successor's own choice is of course the

* Narada, 13. 3. † Gautama, 28, 1.

‡ Gautama, 28. 2. || Gautama, 28. 2 § See Jimuta-vahana, C. 1. § 44.

|| Cited as a passage of Harita in the Vyavahara Mayukha.

¶ Yajnavalkya, 2, 116. Equal would be better than *like*—*Ed.*

9. Exposition of it.
The wife shares like a son.

9 When the father, by his own choice, makes all his sons partakers of equal portions, his wives, to whom peculiar property had not been given by their husband, or by their father-in-law, must be made participant of shares equal to those of sons But, if separate property have been given to a woman, the author subsequently directs half a share to be allotted to her: "Or if any had been given, let him assign the half"*

10 Excepting the deduction for the first born, &c, But she takes her ornaments and the household furniture

10 But, if he give the superior allotment to the eldest son, and distribute similar unequal shares to the rest, his wives do not take such portions, but receive equal shares of the aggregate from which the son's deductions have been subtracted, besides their own appropriate deductions specified by Apastamba "The furniture in the house and her ornaments are the wife's [property]."†

11 A trifle may be given to a son who needs not a full share
Text of Yajnavalkya.

11. To the alternative before stated (§ 1) the author propounds an exception: "The separation of one, who is able to support himself and is not desirous of participation, may be completed by giving him some trifle."‡

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reason. By this mode, the periods are three Else there must be great confusion, in the uncertainty of subject and accident. If many reasons, as extinction of worldly propensities and so forth, must be established collectively and alternatively. Thus the mention of certain reasons in some texts, and the omission of them in others, are suitable for the extinction of the temporal affections, and the other assigned reasons, indicate the single circumstance of the father's want of uncontrolled power; since it is easy to establish that single foundation of the text. Viramitrodaya.

When the father's passions are extinguished] Jimutavahana's reading of the passage, is different and there are other variations of this text. See note on Jimutavahana. Ch. I § 33.

Partition of inheritance takes place without the father's wish] A text of a contrary import is cited from the same author, by Jimutavahana. See note on Jimuta-vahana C. I. § 43

9. The author subsequently directs half a share.] This and the passage cited may be supposed to bear reference to a passage which occurs near the close of the head of inheritance. (C. 2 Sect 11 § 34) but the quotation is not exact, and the text relates to a different subject.

10. The furniture in the house, &c] The chairs, and the earthen and stone utensils, and the ornaments worn by her are wife's deducted allotment. Haradatta¶ says the furniture, as well as the car, is the father's; and the ornaments are the wife's. Balam-Bhatta.

*Vidde infra. C. Sect. 11 § 31. † The scholiast of Gautama.

‡ Vide infra. Sect. 3. § 6.

12. Interpretation of the text.

12. To one who is himself able to earn wealth, and who is not desirous of sharing his father's goods, any thing whatsoever, though not valuable, may be given, and the separation or division may be thus completed by the father; so that the children, or other heirs, of that son, may have no future claim of inheritance.

13 An illegally partial distribution is improper Text of Yajnavalkya.

13. The distribution of greater and less shares has been shown (§ 1.) To forbid, in such case, an unequal partition made in any other mode than that which renders the distribution uneven by means of deduction, such as are directed by the law, the author adds.

"A legal distribution, made by the father among sons separated with greater or less shares, is pronounced valid "*

14. Explanation of the passage

14. When the distribution of more or less among sons separated by an unequal partition is legal, or such as ordained by the law; then that division, made by the father, is completely made, and cannot be afterwards set aside: as is declared by Manu and the rest. Else it fails, though made by the father. Such is the meaning, and in like manner, Narada declares

Confirmed by a quotation from Narada

"A father, who is afflicted with disease, or influenced by wrath, or whose mind is engrossed by a beloved object, or who acts otherwise than the law permits, has no power in the distribution of the estate. †

SECTION III.

Partition after the Father's decease.

1 Distribution among brothers should be equable, by the text of Yajnavalkya

1. The author next propounds another period of partition, other persons as making it, and a rule respecting the mode.

"Let sons divide equally both the effects and the debts, after [the demise of] their two parents."‡

Interpretation of the passage.

2. After their two parents] After the demise of the father and mother: here the period of the distribution is shown The sons.] The persons, who make the distribution, are thus

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13. In any other mode.] The commentator Balam-bhatta prefers another reading ayathacastra 'not according to law' instead of anyatha 'in any other mode.'

* Yajnavalkya, 2. 117. † Narada, 13. 16.
‡ Yajnavalkya, 2. 118.

indicated. Equably.] A rule respecting the mode is by this *declared: in equal shares only should they divide the effects and debts.*

3 Objection to the restriction of equal shares, since an unequal division is authorized by Manu

3. But Manu, having premised "*partition after the death of the father and the mother*,"* and having declared "*The eldest brother may take the patrimony entire, and the rest may live under him as under their father*,"† has exhibited a distribution with deductions, among brethren separating after the death of their father and mother: "The portion deducted for the eldest is the twentieth part of the heritage with the best of all the chattels; for the middlemost, half of that; for the youngest, a quarter of it."‡ The twentieth part of the whole amount of the property [to be divided.§] and the best of all chattels, must be given [by way of deduction‖] to the eldest; half of that, or a fortieth part, and a middling chattel, should be allotted to the middlemost; and a quarter of it, or the eightieth part, with the worst chattel, to the youngest. He has also directed an unequal partition, but without deductions, among brethren separating after their parents' decease; allotting two shares to the eldest, one a half to the next born, and one apiece to the younger brothers: "If a deduction be thus made, let equal shares of the residue be allotted: but, if there be no deduction, the shares must be distributed in this manner; let the eldest have double share; and the next born a share and a half, and the younger sons each a share: thus is the law settled."¶ The author himself** has sanctioned an unequal distribution when a division is made during the father's life-time ("Let him either dismiss the eldest with the best share, &c."††) Hence an unequal partition is admissible in every period. How then is a restriction introduced, requiring that sons should divide only equal shares?

4. Answer. Unequal distribution is disused; through popular prejudice, like the slaughter of kine.

4. The question is thus answered: True, this unequal partition is found in the sacred ordinances; but it must not be practised, because it is abhorred by the world; since that is forbidden by the maxim "Practise not that which is legal, but is abhorred by the world, [for‡‡]

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4. As the slaying of a cow is for the same reason disused.] This is a very remarkable admission of the former prevalence of a practice, which is now held in the greatest abhorrence.

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* Manu, 9. 104 † Manu, 9. 105. ‡ Manu, 9. 112.
§ Balam-bhatta ‖ Ibid ¶ Manu, 9. 116—117.
** Yajnavalkya. †† Vide Sect. 2. § I. ‡‡ Subodhini and Balam-bhatta.

it secures not celestial bliss:"* as the practice [of offering bulls] is shunned, on account of popular prejudice, notwithstanding the injunction: "Offer to a venerable priest a bull or a large goat;"† and as the slaying of a cow is for the same reason disused, notwithstanding the precept "Slay a barren cow as a victim consecrated to Mitra and Varuna."‡

5. It is expressly declared, "As the duty of an appointment [to raise up seed to another,] and as the slaying of a cow for a victim, are disused, so is partition with deductions [in favour of elder brothers]"§

5 It is declared obsolete in a passage of law

6. Apastamba also, having delivered his own opinion, "A father, making a partition in his life-time, should distribute the heritage equally among his sons," and having stated, as the doctrine of some, the eldest's succession to the whole estate ("Some hold, that the eldest is heir,") and having exhibited, as the notion of others, a distribution with deductions.

6 Apastamba, after describing an unequal partition, cites a passage of the Veda, which implies an equal distribution only

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5 The duty of an appointment.] So the term (niyoga-dharma is here interpreted by the author of the Viramitrodaya. But it is explained in the Subodhini, intending the injunction of an observance, such as the offering of a bull, &c

6 In some countries the gold, &c] The sense of the text is this In certain countries, the gold, the black kine, the black produce of earth, an Masha‖ and other dark-coloured grain, or as black iron, (for so some interpret the word.) appertain to the eldest son; the car, and the furniture in the house, or utensils such as stools and the like, belong to the father,¶ the jewels worn by her are the wife's, as well as property which she has received from the father and other kinsmen. Such respectively are the portions of the eldest son, of the father, and of his wife Subodhini; and Haradatta cited by Balam-bhatta.

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* Yajnavalkya I 155. Balam-bhatta wrongly ascribes it to Manu. Colebrooke says it is not to be found in Yajnavalkya Institute —*Ed.*

† This also is a passage Yajnavalkya, according to Mitra Misra's quotation; but has not been found in the institutes of that author.

‡ A passage of the Veda, as the preceding one is of the Smrti, according to the remark of the Subodhini and Balam-bhatta.

§ Smrti-sangraha as cited in the Viramitrodaya. ‖ Phaseolus radiatus.

¶ See a different interpretation. Sect. 2. § 10.

("In some countries, the gold, the black kine, and the black produce of the earth, belong to the eldest son; the car appertains to the father; and the furniture in the house and her ornaments are the wife's;* as also the property [received by her] from kinsmen: so some maintain;") has expressly forbidden it as contrary to the law; and has himself explained its inconsistency with the sacred codes · "It is recorded in scripture, without distinction, Manu distributed his heritage among his sons."†

7. Unequal division should not be practised

7. Therefore unequal partition, though noticed in codes of law, should not be practised, since it is disapproved by the world and is contrary to scripture For this reason, a restriction is ordained, that brethren should divide only in equal shares

8. The mother's peculiar property goes to her daughter.

8. It has been declared, that sons may part the effects after the death of their father and mother The author states an exception in regard to the mother's separate property:

"The daughters share the residue of their mother's property, after payment of her debts."‡

9 Exposition of Yajnavalkya's text.

9. Let the daughters divide their mother's effects remaining over and above the debts, that is, the residue after the discharge of the debts contracted by the mother Hence, the purport of the preceding part of the text is, that sons may divide their mother's effects, which are equal to her debts or less than their amount.

10. Sons, not daughters, are to discharge the mother's debts but her wealth goes to her daughters, as the father's dedolves on the son

10. The meaning is this: A debt, incurred by the mother, must be discharged by her sons, not by her daughters; but her daughters shall take her property remaining above her debts. and this is fit; for by the maxim "A male child is procreated if the seed predominate, but a female if the woman contribute most to the fœtus," the women's property goes to her daughters, because portions of her abound in her female children; and the father's estate goes to his sons, because portions of him abound in his male children.

ANNOTATIONS.

Among his sons.] Balam-bhatta reads putrena "son" in the singular; but all copies of the Mitakshara and Subodhini, which have been collated, exhibit the term in the plural (putrebhyah "sons,") and so does the Viramitrodaya, quoting this passage from the Mitakshara.

8. Sons may divide their mother's effects, which are equal to her debts or less.] They may take the goods and must pay the debts. Balam-bhatta.

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* Vide supra. Sect. 2 § 10

† A passage of the Taittiriya Veda, cited by Apastamba; as here remarked by Balam-bhatta

‡ Yajnavalkya, 2 118.

11. On the subject [of daughters*] a special rule is propounded by Gautama: "A woman's property goes to her daughters, unmarried, or unprovided."† His meaning is this: if there be competition of married and unmarried daughters, the woman's separate property belongs to such of them as are unmarried; or, among the married, if there be competition of endowed and unendowed daughters, it belongs exclusively to such as are unendowed: and this term signifies 'destitute of wealth.'

11. It goes first to unmarried or unprovided daughters.

12. In answer to the question, who takes the residue of the mother's goods, after payment of her debts, if there be no daughter? the author adds:

12. On failure of daughters, it goes to her sons.

"And the issue succeeds in their default."‡

13. On failure of daughters, that is, if there be none, the son, or other male offspring, shall take the goods. This, which was right under the first part of the text ("Let sons divide equally both the effects and the debts;"§) is here expressly declared for the sake of greater perspicuity.

13. Interpretation of the text of Yajnavalkya.

SECTION IV.

Effects not liable to Partition.

1. The author explains what may not be divided: "Whatever else is acquired by the co-parcener himself, without detriment to the father's estate, as a present from a friend, or a gift at nuptials, does not appertain to the co-heirs. Nor shall he, who recovers hereditary property, which had been taken away, give it up to the parceners: nor what has been gained by science."‖

1. Certain acquisitions are exempt from partition.

ANNOTATIONS.

11. Unmarried or unprovided.] The text is explained otherwise by Jimutavahana. (C. 4. Sect. 2. § 13. and 23.)

Married and unmarried.] Married signifies espoused; unmarried, maiden. Subodhini.

Endowed and unendowed.] Endowed signifies supplied with wealth; unendowed, unfurnished with property. Balam-bhatta.

* Balam-bhatta. † Gautama, 28. 22 ‡ Yajnavalkya, 2. 118.
§ Vide § 1. ‖ Yajnavalkya, 2. 119-120.

2. Exposition of Yajnavalkya's text.

2. That, which had been acquired by the co-parcener himself without any detriment to the goods of his father or mother; or which has been received by him from a friend, or obtained by marriage, shall not appertain to the co-heirs or brethren. Any property, which had descended in succession from ancestors, and had been seized by others, and remained unrecovered by the father and the rest through inability or for any other cause, he, among the sons, who recovers it, with the acquiescence of the rest, shall not give up to the brethren or other co-heirs: the person recovering it shall take such property.

3. Sankha directs, that, if land be recovered by one co-heir, he shall have a quarter of it

3. If it be land, he takes the fourth part, and the remainder is eqally shared among all the brethren So Sankha ordains "Land, [inherited] in regular succession, but which had been formerly lost and which a single [heir] shall recover solely by his own labour, the rest may divide according to their due allotments, having first given him a fourth part."

4. A word supplied in the text

4 In regular succession] Here the word "inherited" must be understood

5 The close of the passage of Yajnavalkya (§1.) explained.

5 He need not give up to the co-heirs, what has been gained by him, through science, by reading the scriptures or by expounding their meaning: the acquirer shall retain such gains.

6. The acquisition must have been made without charge to the patrimony.

6. Here the phrase "any thing acquired by himself, without detriment to the father's estate," must be every where understood: and it is thus connected with each member of the sentence; what is obtained from a friend, without detriment to the paternal estate; what is received in marriage, without waste of the

ANNOTATIONS

4. Inherited must be understood] The author supplies the deficiency in the text cited by him. The words "in succession" are in the text, "inherited" must be understood to complete the sense. Subodhini.

6 Any thing acquired by himself] Here, according to Balam-bhatta's remark, either a different reading is proposed (kinchit for anyat,) or an interpretation of the words of the text, "whatever else (anyat)" being explained by (kinchit) 'any thing.'

It is connected with every other member of the sentence] More is implied: for the same phrase is understood in every instance, stated in other codes, of acquisitions exempt from partition. Subodhini.

In the form termed Asura] For, at such a marriage, wealth is received from the bridegroom by the father or kinsmen of the bride. See Manu, 3. 31.

patrimony ; what is redeemed, of the hereditery estate, without expenditure of ancestral property ; what is gained by science, without use of the father's goods. Consequently, what is obtained from a friend, as the return of an obligation conferred at the charge of the patrimony ; what is received at a marriage concluded in the form termed Asura or the like, what is recovered, of the hereditary estate, by the expenditure of the father's goods ; what is earned by science acquired at the expense of ancestral wealth, all that must be shared with the whole of the brethren and with the father

7 And acquisitions so made, but not included in the enumerated sorts, are divisible

7 Thus, since the phrase "without detriment to the father's estate" is in every place understood ; what is obtained by simple acceptance, without waste of the patrimony, is liable to partition. But, if that were not understood with every member of the text, presents from a friend, a dowry received at a marriage, and other particular acquisitions, need not have been specified.

8 An objection refuted.

Passages of Narada and Katyayana, on the gains of science

8. But, it is alleged, the enumeration of amicable gifts and similar acquisitions is pertinent, as showing, that such gains are exempt from partition, though obtained at the expense of the patrimony. Were it so, this would be inconsistent with the received practice of unerring persons, and would contradict a passage of Narada. "He, who maintains the family of a brother studying science, shall take, be he ever so ignorant, a share of the wealth gained by science."* Moreover the definition of

ANNOTATIONS.

7 Thus since the phrase &c.] A different reading is noticed by Balam-Bhatta "Not thus," natatha instead of "Thus" tatha. It is taken as a distinct sentence, and is explained as intimating, that, on the other hand, amicable gifts and the like, acquired without detriment to the patrimory, are not liable to partition. According to this reading and interpretation, that short sentence belongs to the preceding paragraph.

In the following sentence there seems to be another defference of reading, in the phrase "without waste (or with waste) of the patrimony" But the reading, which is countenanced by the exposition given in the Subodhini, has been preferred

Since the phrase "without detriment to the father's estate."] Since that portion of the text is applicable to amicable gifts and other acquisitions whch are specified as exempt from partition, therefore, as those acquisitions made at the charge of the patrimony are liable to be shared, so any thing obtained by mere acceptance, not being included among such acquisitions, must be subject to partition, though procured without use of the paternal goods. Subodhini

8. As showing that such gains are exempt from partition.] A difference in the reading of this passage, bhajvatvat (in the ablative case) instead of bhajvatvaya (in the dative), is mentioned by Balam-Bhatta ; but he makes no difference in the interpretation.

* Narada, 13 10.

wealth, not participable, which is gained by learning, is so propounded by Katyayana: "Wealth, gained through science which was acquired from a stranger while receiving a foreign maintenance, termed acquisition through learning."

9 It is a condition in the exemption, that the gain be without loss to the patrimony

9. Thus, the phrase "without detriment to the father's estate," be taken as a separate sentence, any thing obtained by mere acceptance would be exempt from partition, contrary to established practice.

10 This is corroborated by a passage of Manu.

10. This [condition, that the acquisition be without detriment to the patrimony,*] is made evident by Manu. "What a brother has acquired by his labour, without using the patrimony, he need not give up to the co-heirs; nor what has been gained by science."†

11. Exposition the text.

11. By labour] by science, war or the like

12- An objection stated

12. Is it not unnecessary to declare, that effects obtained as presents from friends, and other similar acquisitions made without using the patrimony, are exempt from partition: since there was no ground for supposing a partition of them? That what is acquired, belongs to the acquirer, and to no other person, is well known but a denial implies the possible supposition to the contrary.

13. An erroneous solution of it quoted.

13. Here a certain writer thus states ground for supposing a partition By interpreting the text, "After the death of the father, if the eldest brother acquire any wealth,' a share of that belongs to the younger brothers, provided they have duly cultivated science,"‡ in this manner, 'if the eldest, youngest or middlemost, acquire property before or after the death of the father, a share shall accrue to the rest, whether younger

ANNOTATIONS.

Would contradict a passage of Narada] Since the support of the family is here stated as a reason for partaking of the property, the right of participation in the gains of science is founded on a special cause; and is not a natural consequence of relation as a brother. and the gains of science are not naturally liable to partition, and are therefore mentioned as excepted from distribution.

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* Subodhini.

† Manu, 9 208. The close of this passage is read differently by Kulluka-bhatta, Jimuta-vahana, &c. See Jimuta-vahana Ch. 6. Sect. 1, § 3.

‡ Manu, 9. 204.

or elder;' grounds do exist for supposing friendly presents and the like to be liable to partition, whether or not the father be living: that is accordingly denied.

14. The argument is erroneous: since there is not here a denial of what might be supposed; but the text is a recital of that which was demonstratively true. for most texts, cited under this head, are mere recitals of that which is notorious to the world.

14. Refutation of it and solution of the difficulty.

15. Or you may be satisfied with considering it as an exception to what is suggested by another passage, "All the brethren shall be equal shares of that which is acquired by them in concert:"* and it is therefore a mere error to deduce the suggestion from an indefinite import of the word "eldest" in the text before cited (§ 13). That passage must be interpreted as an exception to the general doctrine, deduced from texts concerning friendly gifts and the rest, that they are exempt from partition, both before the father's death and after his demise.

15 Another solution proposed.

16. Other things exempt from partition, have been enumerated by Manu; "Clothes, vehicles, ornaments, prepared food, women, sacrifices and pious acts, as well as the common way, are declared not liable to distribution."†

16 Manu enumerates other things exempted.

17. Clothes, which have been worn, must not be divided. What is used by each person, belongs exclusively to him, and what had been worn by the father, must be given by brethren parting after the father's decease, to the person who partakes of food at his obsequies: as directed by Vrihaspati; "The clothes and ornaments, the bed and similar furniture, appertaining to the father, as well as his vehicle and the like, should be given, after perfuming them with fragrant drugs and wreaths of flowers, to the person who partakes of the funeral repast." But new clothes are subject to distribution.

17. Exposition of the text.
The apparel of the brethren is retained by them.
The father's apparel is given away at his obsequies.
A passage of Vrihaspati confirms this.
New clothes may be distributed.

* Vrihaspati cited in the Ratnakara. † Manu, 9. 204.

Dr. Buhler has more correctly translated the passage. Property destined for pious uses or sacrifices is more correct than sacrifices and pious acts. Again vehicle is uncorrect, it should be property recorded in a document.—*Ed.*

18. Vehicles] The carriages, as horses, litters or the like. Here also, that, on which each person rides, belongs exclusively to him. But the father's must be disposed of as directed in regard to his clothes. If the horses or the like be numerous, they must be distributed among co-heirs who live by the sale of them. If they cannot be divided, the number being unequal, they belong to the eldest brother: as ordained by Manu: "Let them never divide a single goat or sheep, or a single beast with uncloven hoofs: a single goat or sheep belongs to the first born."*

18. So of vehicles.

Cattle may be distributed in some cases

If few, they go to the eldest brother conformably to a passage of Manu.

19. The ornaments worn by each person are exclusively his. But what has not been used, is common and liable to partition. "Such ornaments, as are worn by women during the life of her husband, the heirs of the husband shall not divide among themselves: they who do so, are degraded from their tribe."† It appears from the condition here specified ("such ornaments as are worn," that those, which are not worn may be divided.

19. Ornaments likewise belong to the wearer, under the text of Manu.

Unworn ornaments may be shared.

20. Prepared food, as boiled rice, sweet cakes and the like, must be similiarly exempted from partition. Such food is to be consumed according to circumstances.

20. Prepared food is to be consumed.

21. Water, or a reservoir of it, as a well or the like, being unequal [to the allotment of shares,] must not be distributed by means of the value; but is to be used [by the co-heirs] by turns.

21. A well is to be used by turns.

ANNOTATIONS.

18. The number being unequal.] Inequality here signifies insufficiency for shares; not imparity for number. And this is fit. Suppose three horses and three sons: since the number is adequate to the allotment of shares, the horses may be divided. Suppose four horses and either three or five sons: since the horses do not answer to the number of co-heirs, and cannot be distributed into shares in their kind, and since a distribution by means of the value is forbidden, and the cattle is directed to be given to the eldest brother, the horses may be divided so far as they are adequate to the shares, and the surplus shall be given to the eldest. Throughout this title, imparity must be so understood. Subodhini.

21. Being unequal.] It is thus hinted, that, if the number be adequate, partition takes place. Balam-bhatta.

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* Manu, 9. 119.

† Manu, 9. 200.

22. Female slaves are to alabour for the heirs by turns but concubines are not to be shared.

Gautama forbids it

22. The women or female slaves, being unequal [in number, to shares,] must not be divided by the value, but should be employed in labour [for the coheirs] alternately. But women (adulteresses or others) kept in concubinage by the father, must not be shared by the sons, though equal in number: for the text of Gautama forbids it: "No partition is allowed in the case of women connected [with the father or with one of the coheirs."*

23. Interpretation of Yoga and Kshema sacrifices and pious acts, in the text before cited (§ 16.)

23. The term Yogakshema is a conjunctive compound resolvable into Yoga and Kshema. By the word yoga is signified a cause of obtaining something not already obtained. that is a sacrificial act to be performed with fire consecrated according to the Veda and the law. By the term kshema is denoted an auspicious act which becomes the means of conservation of what has been obtained: such is the making of a pool or a garden, or the giving of alms elsewhere than at the altar. Both these, though appertaining to the father or though accomplished at the charge of the patrimony, are indivisible; as Laugakshi declares: "The learned have named a conservatory act Kshema, and a sacrificial one Yoga; both are pronounced indivisible; and so are the bed and the chair"

24 Other interpretations of the same term.

24. Some hold, that by the compound term Yogakshema, those, who effect sacrifical and conservatory acts (yoga and kshema), are intended, as the king's counsellers, the stipendiary priests, and the rest. Others say, weapons, cowtails, parasols, shoes and similar things are meant.

25. The common way is indivisible.

25. The common way, or road of ingress and egress to and form the house, garden, or like, is also indivisible.

ANNOTATIONS.

22 "Women connected."] Enjoyed, or kept in concubinage. Subodhini.

Female slaves, being taken for enjoyment by any one of the brethen or co-heirs, belongs exclusively to him. Haradatta on Gautama.

24. Some hold.] The interpretation, given by Medhatithi and the Kalpataru, is stated. Balam-bhatta.

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* Gautama, 28, 45.

26. A text of Ucanas, concerning land, is restricted to the case of inferior sons; like a passage of Vrihaspati.

26. The exclusion of land from partition, as stated by Usanas, ("Sacrificial gains, land, written documents, prepared food, water, and women, are indivisible among kinsmen even to the thousandth degree;") bears reference to sons of a Brahmana by women of the military and other inferior tribes for it is ordained: "Land, obtained by acceptance of donation, must not be given to the son of a Kshatriya (or other) wife (of inferior tribe even though his father give it to him, the son of the Brahmani may resume it, when his father is dead"*

27. A term in the text explained.

27. Sacrificial gains] acquired by officiating at religious ceremonies

28. In general the father's donations to his sons are not divisible.

28. What is obtained through the father's favour, will be subsequently declared exempt from partition † The supposition that any thing, acquired by transgressing restrictions regarding the mode of acquisition, is indivisible has been already refuted ‡

29. The acquirer has a double share if the patrimony have been used · by the text of Vasishtha.

29. It is settled, that whatevar is acquired at the charge of the patrimony, is subject to partition. But the acquirer shall, in such a case, have a double share, by the text of Vasishtha "He, among them, who has made an acquisition, may take a double portion of it."§

30. Not however, where the common stock is improved.

30. The author propounds an exception to that maxim.

"But, if the common stock be improved, an equal division is ordained."||

31. Exposition of the text of Yajnavalkya.

31. Among unseparated brethren, if the common stock be improved or augmented by any one of them, through agriculture, commerce or similar means, an equal distribution nevertheless takes place; and a double shares is not allotted to the acquirer.

ANNOTATIONS.

Balam-bhatta notices another variation of the reading, but with disapprobation; aneka-pitrikanam. It intends the same meaning, though inaccurately expressed.

29. He, among them.] Among the brethren. Subodhini.

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* This is a passage of Vrihaspati, according to the remark of Balam-bhatta; and it is cited as such by Jimuta-vahana, C. 9. § 19.

† Sect. 6. § 13. 16. ‡ Sect. 1. § 16.

§ Vasishtha, 17. 42. || Yajnavalkya, 2. 121.

SECTION V.

Equal rights of Father and Son in property ancestral.

1 Grandsons share the allotment which their deceased father would have had

1. The distribution of the paternal estate among sons has been shown; the author next propounds a special rule concerning the division of the grandfather's effects by grandsons.

"Among grandsons by different fathers, the allotment of shares is according to the fathers."*

2 Exposition of Yajnavalkya's text.

2. Although grandsons have by birth a right in the grandfather's estate equally with sons; still the distribution of the grandfather's property must be adjusted through their fathers, and not with reference to themselves. The meaning here expressed is this: if unseparated brothers die, leaving male issue; and the number of sons be unequal, one having two sons, another three, and a third four; the two receive a single share in right of their father, the other three take one share appertaining to their father, and the remaining four similarly obtain one share due to their father. So, if some of the sons be living and some have died leaving male issue; the same method should be observed: the surviving sons take their allotments, and the sons of their deceased brothers receive the shares of their own fathers respectively. Such is the adjustment prescribed by the text.

3. The right of father and son in property ancestral, is equal.

3. If the father be alive, and separate from the grandfather, or if he have no brothers, a partition of the grandfather's estate with the grandson would not take place; since it has been directed, that shares shall be allotted, in right of the father, if he be deceased: or, admitting partition to take place, it would be made according to the pleasure of the father, like a distribution of his own acquisitions: to obviate this doubt the author says:

ANNOTATIONS.

1. Grandsons by different fathers] Children of distinct fathers; meaning sons of brothers. Another reading also occurs · pramita pitrikanam "whose fathers are deceased," instead of aneka-pitrikanam "whose fathers are different." Subodhini.

3. If he be deceased] A variation in the reading and punctuation of the passage is noticed by Balam-bhatta · 'vibhago n'asti dhriyamane; apitari pitrito bhaga kalpanetyuktatvat,' (instead of vibhago n'asti; adhriyamane pitari pitrito, &c.) "partition would not take place, if he be living, since it is directed that shares shall be alloted in right of the father, if he be deceased."

* Yajnavalkya, 2 121.

"For the ownership of father and son is the same in land, which was acquired by the grandfather, or in a corrody, or in chattels [which belonged to him."]*

4. Explanation of Yajnavalkya's text.

4. Land] a rice-field or other ground. A corrody] So many leaves receivable from a plantation of betel pepper, or so many nuts from an orchard of areca. Chattels] gold, silver, or other moveables.

5. Since the right is equal, partition is not by the father's choice only, nor has he a double share.

5. In such property, which was acquired by the paternal grandfather, through acceptance of gifts, or by conquest or other means [as commerce, agriculture, or service,†] the ownership of father and son is notorious; and therefore partition does take place. For, or because, the right is equal, or alike, therefore partition is not restricted to be made by the father's choice; nor has he a double share.

6. For the same reason, the distribution is as before stated (§ 1)

6. Hence also it is ordained by the preceding text, that "the allotment of shares shall be accordiug to the fathers," (§ 1.) although the right be equal.

ANNOTATIONS.

To obviate this doubt the author says.] If the father be alive and separated from his own father, or if, being an only son with no brothers to participate with him, he be alive and not separated from his own father; then, since in the first mentioned case he is separate, no participation of the grandson's own father, in the grandfather's estate, can be supposed and therefore, as well as because he is surviving, the granson cannot be supposed entitled to share the grandfather's property, since the intermediate person obstructs his title: and, in the second case, although the grandson's own father have pretensions to the property, since he is not separated, still the participation of the grandson in his grandfather's estate cannot be supposed, for his own father is living: hence no partition of the grandfather's effects, with the grandson whose father is living, can take place in any circumstances. Or admitting that such partition may be made, because he has a right by birth; still, as the father's superiority is apparent, (since a distribution by allotment to him is directed, when he is deceased; and that is more assuredly requisite, if he be living; it follows, that partition takes place by the father's choice and that a double share belongs to him. Subodhini.

For the ownership of father and son] The Kalpataru and Aparарka read "The ownership of both father and son" instead of "For the ownership of father and son:" ohobhayoh instead of ohaiva hi.

4. Betle pepper.] Piper betle. Linn. Betle leaf.

Areca.] Areca Faufel. Goert. Betle nut.

* Yajnavalkya, 2. 122

† Balam-bhatta.

7. Other passages reconciled.

7. The first text "When the father makes a partition, &c." (Sect. 2. § 1.) relates to property acquired by the father himself. So does that which ordains a double share: "Let the father, making a partition, reserve two shares for himself."* The dependence of sons, as affirmed in the following passage, "While both parents live, the control remains, even though they have arrived at old age;"† must relate to effects acquired by the father or mother. This other passage: "They have not power over it (the paternal estate) while their parents live;"‡ must also be referred to the same subject.

8 Partition of the grandfathers estate may be exacted by the sons from their father.

8. Thus, while the mother is capable of bearing more sons, and the father retains his wordly affections and does not desire partition, a distribution of the grandfather's estate does nevertheless take place by the will of the son.

9. The grandson may interpose to prevent the dissipation of the inherited property by the father; but his acquired property.

9. So likewise, the grandson has a right of prohibition, if his unseparated father is making a donation, or a sale, of effects inherited from the grandfather: but he has no right of interference, if the effects were acquired by the father. On the contrary, he must acquiesce, because he is dependent.

10. The distinction stated explicitly.

10. Consequently the difference is this: although he have a right by birth in his father's and in his grandfather's property; still, since he is dependant on his father in regard to the paternal estate, and since the father has a predominant interest as it was acquired by himself, the son must acquiesce in the father's disposal of his own acquired property: but, since both have indiscriminately a right in the grandfather's estate, the son has a power of interdiction [if the father be dissipating the property.§]

11. A passage of Manu cited and explained.

11. Manu likewise shows, that the father, however reluctant, must divide with his sons, at their pleasure, the effects acquired by the paternal grandfather; declaring, as he does ("If the father recover paternal wealth not recovered by his co-heirs, he shall not, unless willing, share it with his sons; for in fact it was acquired by him:")‖ that, if the father recover property which had been acquired by an ancestor, and taken away by a stranger, but not redeemed by the grandfather, he need not himself share it, against his inclination, with his sons; any more than he need give up his own acquisitions.

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* Narada, 13. 12.

† The remainder of this passage has not been found, nor is the text cited in other compilations. Balam-bhatta ascribes it to Manu; but it is not found in his Institutes.

‡ Manu, 9. 204.

§ Subodhini.

‖ Manu, 9. 209.

SECTION VI.

Rights of a posthumouns son and of one born after the partition.

1. A son born after partition, is entitled to share conformably with the text of Yajnavalkya

1. How shall a share be alloted to a son born subsequently to a partition of the estate? The author replies

"When the sons have been separated, one who is [afterwards] born of a woman equal in class, shares the distribution "*

2 He takes the allotments of his father and mother.

2. The sons being separated from their father, one, who shall be afterwards born of a wife equal in class, shall share the distribution. What is distributed, is distribution, meaning the allotments of the father and mother . he shares that ; in other words, he obtains after [the demise of *] his parent, both their portions : his mother's portion, however, only if there be no daughter ; for it is declared that "Daughters share the residue of their mother's property, after payment of her debts."†

3 Born of a woman of a different tribe, he takes only his proper allotment (Sect 8.

3 But a son by a woman of a different tribe, receives merely his own proper share from his father's estate, with the whole of his mother's property [if there be no daughters) ‡

4. Passage of Manu and Vrihaspati of like import.

4. The same rule is propounded by Manu: "A son] born after a division, shall alone take the parental wealth "§ The term parental (pitryam) must be here interpreted 'appertaining to both father and mother ' for it is ordained, that "A son, born before partition, has no claim on the wealth of his parents , nor one, begotten after it, on that of his brother."||

ANNOTATIONS.

2. If there be no daughter] But, if there be a daughter, the son does not take his mother's portion. Subodhini.

3. His own proper share] See Section 8.

From his father's estate] Balam-bhatta here notices a different reading ; pitryam in the accusative, for pitryat in the ablative and afterwards. Matrikan "maternal ' for matuh ' his mother's." The sense is not matereally affected by these variations

4. On the wealth of his parents] This passage, being read differently by Jimutavahara (Ch 7 § 5), who writes pitrye "parental or paternal" instead "of pitroh "of both parents," is not less ambiguous according to that reading, than the text cited from Manu.

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* Balam-bhatta. † Yajnavalkya, 2. 118. Vide supra. Sect 3. § 8.

‡ Subodhini § Manu, 9. 216. || Vrihaspati.

5\. Exposition of the text last cited.

5\. The meaning of the text is this : one, born previously to the distribution of the estate, has no property in the share allotted to his father and mother who are separated [from their elder children*] ; nor is one, born of parents separated [from their children], a proprietor of his brother's allotment.

6 The father's subsequent acquisitions belong to the son born after separation.

6\. Thus, whatever has been acquired by the father in the period subsequent to partition, belongs entirely to the son born after separation. For it is so ordained : "All the wealth, which is acquired by the father himself, who has made a partition with his sons, goes to the son begotten by him after the partition : those born before it, are declared to have no right."

7 To be shared however with such brothers as were reunited

7\. But the son, born subsequently to the separation, must, after the death of his father, share the goods with those who reunited themselves with the father after the partition : as directed by Manu ; "Or he shall participate with such of the brethren, as are reunited with the father."†

8\. Right of a posthumous son sage of Yajnavalkya

8\. When brethren have made a partition subsequently to their father's demise, how shall a share be alloted to a son born afterwards ? The author replies "His allotment must absolutely be made, out of the visible estate corrected for income and expenditure."‡

9 Exposition of the text

9\. A share allotted for one who is born after a separation of the brethern, which took place subsequently to the death of the father, at a time when the mother's pregnancy was not manifest, is "his allotment." But whence shall it be taken ? The author replies, "from the visible estate" received by the brethren, "corrected for income and expenditure." Income is the daily, monthly or annual produce. Liquidation of debts contract-

ANNOTATIONS.

5\. In the share.] Balam-bhatta censures another reading, vibhage "in the division," for bhage "in the share."

8\. Absolutely.] The particle va is here employed affirmatively. The meaning is, that an allotment for them should be made only from the visible estate corrected for income and expenditure. Subodhini.

9\. His allotment.] The pronoun "his" refers to the son born after partition. Subodhini

Corrected for income and expenditure.] If agriculture or the like have been practised by the brethern with their several shares after separation, the gain is "income" The payment of the father's debts, the support of their own families, and similar disbursements constitute "expenditure."

* Balam-bhatta. † Manu, 9 216 ‡ Yajnavalkya, 2, 123

ed by the father, is expenditure. Out of the amount of property corrected by allowing for both income and expenditure, a share should be taken and allotted to the [posthumous son.]

10 An equal share is formed for him out of the allotments of the rest, making allowance for gain and for debts

10. The meaning here expressed is this: Including in the several shares income thence arisen, and subtracting the father's debts, a small part should be taken from the remainder of the shares respectively, and an allotment, equal to their own portions, should be thus formed for the [posthumous] son born after partition.

11 The posthumous son of a brother has the same right.

11 This must be understood to be likewise applicable in the case of a nephew, who is born after the separation of the brethren, the pregnancy of the brother's widow, who was yet childless, not having been manifest at the time of the partition.

12 If the pregnancy be manifest, the partition should be postponed until after the delivery as directed by Vasishtha.

12. But if she were evidently pregnant, the distribution should be made, after awaiting her delivery; as Vasishtha directs, "Partition of heritage [takes place] among brothers [having waited] until the delivery of such of the women, as are childless [but pregnant]"* This text should be interpreted, 'having waited until the delivery of the women who are pregnant.'

ANNOTATIONS.

Counting the income in the shares, and deducting the expenditure from the allotments, as such as may be in each instance proper, should be taken from each portion, and an allotment be thus adjusted for a son born of a pregnancy which existed at the moment of the father's decease, as well as at the time of the partition, though not then manifest. Subodhini

10 Including in the several shares, &c] It is the patrimony though divided, as much as when undivided. Since then the offspring, though yet in the mother's womb, is entitled to a share of the father's goods, as being his issue, therefore that offspring is entitled to participate in the gain arising out of the patrimony. Here again if it be a male child, he has a right to an equal share [with others of the same class] But if a female child, she participates for a quarter of the share due to a brother of the same rank with herself This, which will be subsequently explained, should be here understood Subodhini.

11. Who was yet childless] This is according to the reading and interpretation followed by Balam-bhatta He notices, however, another reading, (aprajasya instead of aprajasi,) which connects the epithet of "childless" with the brother

12. Such of the women as are childless but pregnant.] Vachaspati-misra connects the word "women" (or 'wives') with the term "brothers" The Kalpataru, and other compilations also understand the wives of brothers to be meant but, in the Smriti-chandrika, the passage is interpreted as relating to the widows of the father. All concur in explaining it as meant of pregnant widows

* The first part of this passage corresponds with a text of Vasishtha's institute (17,36.), but the sequel of it is not to be found in that work

13 Presents of parents of their children are incontestible according to Yajnavalkya.

13. It has been stated, that the son, born after partition, takes the whole of his father's goods and of his mother's.* But if the father, or the mother, affectionately bestow ornaments or other presents on a separated son, that gift must not be resisted by the son born after partition; or, if actually given, must not be resumed. So the author declares: "But effects, which have been given by the father, or by the mother, belong to him on whom they were bestowed."†

14. Whether given after a division

14. What is given (whether ornaments or other effects,) by the father and by the mother, being separated from their children, to a son already separated, belongs exclusively to him; and does not become the property of the son born after the partition.

15. Or before it

15. By parity of reason, what was given to any one before the separation, appertains solely to him.

16. This equally holds good when the separated sons are the heirs.

16. So, among brethren, dividing the allotment of their parents who were separated from them, after the demise of those parents, (as may be done by the brothers; if there be no son born subsequently to the original partition,) what had been given by the father and mother to each of them, belongs severally to each, and is shared by no other. This must be understood.

ANNOTATIONS.

This text should be interpreted] The most natural construction of the original text is 'Partition of heritage is among brothers and women who are childless; until the birth of issue' The authors of the Kalpataru and Chintamoni follow that interpretation, and conclude that 'a share should be set apart for the widow who is likely to have issue (being supposed pregnant) and when she is delivered, the share is assigned to her son, if she bear male issue, but, if a son be not born, the share goes to the brethren and the woman shall have a maintenance The author of the Smrti-chandrica acknowledges that to be the natural construction of the words, but rejects the consequent interpretation, because it contains a contradiction, and because widows are not entitled to participate as heirs He expounds the text, nearly as it is explained in the Mitakshara, viz 'Among brothers, who have continued to live together until the delivery of the childless but pregnant widow, partition of heritage takes place after the birth of the issue, when its sex is known, and does not take place immediately after the obsequies.' Visvesvara-bhatta, in the Madana-Parijata, exhibits a similar interpretation 'Partition takes place after awaiting the delivery of widows who are evidently pregnant.

* Vide supra. § I.—§ 7.

† Yajnavalkya, 2. 124.

SECTION VII

Shares allotted to provide for widows and for the nuptials of unmarried daughters—The initiation of uninitiated brothers defrayed out of the joint funds.

1. The widows of the father are entitled to equal shares with the sons; as provided by Yajnavalkya.

1. When a distribution is made during the life of the father, participation of his wives, equally with his sons, has been directed. ("If he make the allotments equal, his wives must be rendered partakers of like portions"*) The author now proceeds to declare their equal participation, when the separation takes place after the demise of the father:

"Of heirs dividing after the death of the father, let the mother also take an equal share."†

2. Exposition of the text They take only half, if they have peculiar property.

2. Of heirs separating after the decease of the father the mother shall take a share equal to that of a son; provided no separate property had been given to her. But, if any had been received by her, she is entitled to half a share, as will be explained ‡

3 The initiation of brothers should be completed out of the common funds

3. If any of the brethren be uninitiated, when the father dies, who is competent to complete their initiation? The author replies:

"Uninitiated brothers should be initiated by those, for whom the ceremonies have been already completed"§

4 Exposition of Yajnavalkya's text.

4. By the brethren, who make a partition after the decease of their father, the uninitiated brothers should be initiated at the charge of the whole estate.

ANNOTATIONS.

2. [illegible] n] Peculiar property of a man (stridhana) Vide C. 2 Sect 11 § 1.

3. Initiation] Sanskara, a succession of religious rites commencing on the pregnancy of the mother and terminating with the investiture of the sacerdotal thread, or with the return of the student to his family and finally his marriage.

4. By the brethren, who make a partition, &c] By such, for whom all the initiatory ceremonies, including marriage, have been completed. Balam-bhatta

After the decease of their father] In the manner, while the father is living but disqualified by degradation from his tribe or other incapacity, if the brethren be themselves the persons who make the partition, the same rule must be understood in regard to the initiation of brothers at the charge of the common stock Balam-bhatta.

* Section 2. § 8. † Yajnavalkya, 2 124 ‡ Vide C. 2. Sect. 11. § 34. || Yajnavalkya, 2. 125.

5. For the marriage of sisters, quarter shares are allotted

5. In regard to unmarried sisters, the author states a different rule :

"But sisters should be disposed of in marriage, giving them as an allotment, the fourth part of a brother's own share."*

6. Explanation of Yajnavalkya's text. A quarter is not to be taken from every brother's share; but a portion, equal to a quarter of the amount of a brother's share, is assigned to the sister.

6. The purport of the passage is this : Sisters also, who are not already married, must be disposed of, in marriage, by the brethren, contributing a fourth part out of their own allotments(*b*). Hence it appears, that daughters also participate after the death of their father. Here, in saying "of a brother's own share," the meaning is not, that a fourth part shall be deducted out of the portions allotted to each brother, and shall be so contributed ; but that the girl shall be allowed to participate for a quarter of such a share as would be assignable to a brother of the same rank with herself. The sense expressed is this : if the maiden be daughter of a Brahmani, she has a quarter of so much as is the amount of an allotment for a son by a Brahmani wife.

7. Example, where the brothers and sisters are of the same tribe.

7. For example, if a certain person had only a Brahmani wife, and leaves one son and one daughter ; the whole paternal estate should be divided into two parts, and one such part be subdivided into four ; and, the quarter being given to the girl, the remainder shall be taken by the son. Or, if there be two sons and one daughter, the whole of the father's estate should be divided into three parts : and one such part be sub-divided into fourth : and, the quarter having been given to the girl, the remainder shall

ANNOTATIONS.

6. The purport of the passage is this.] As commentators disagree in their interpretation of the text, and a subtile difficulty does arise, the author proceeds to show, that his own exposition, and no other, conveys the real sense of the passage. Taking the phrase "the uninitiated should be initiated" as here understood from the preceding, sentence (§ 3), he expounds the text, "Sisters also, who are not already married, &c.

Some thus interpret the words "own share :" 'After assigning as many shares as there are brothers, a quarter part should be given to a sister, out of their several allotments · so that, if there be two or more sisters, a quarter of every share must be given to each of them.'

But others thus expound those terms 'Deducting a quarter from each of their shares, the brothers should give that to a sister. If there be two or more sisters, they and their brothers shall respectively take the same subtracted share [and residue :] and no separate deduction shall be made [for each.']

* Yajnavalkya, 2, 125.

be shared by the sons. But, if there be one son and two daughters, the father's property should be divided into thirds, and two shares be severally sub-divided into quarters: then, having given two [quarter] shares to the girls, the son shall take the whole of the residue. It must be similarly understood in any case of an equal or unequal number of brothers and sisters alike in rank

8 Instance, where they are of different tribes

8. But, if there be one son of a Brahmani wife and one daughter by a Kshatriya woman, the paternal estate should be divided into seven parts; and the three parts, which would be assignable to the son of a Kshatriya woman, must be subdivided by four: then, giving such fourth part to the daughter of the Kshatriya wife, the son of the Brahmani shall take the residue. Or, if there be two sons of the Brahmani and one daughter by the Kshatriya wife, the father's estate shall be divided into eleven parts; and three parts, which would be assignable to a son by a Kshatriya wife, must be subdivided by four: having given such quarter share to the daughter of the Kshatriya, the two sons of the Brahmani shall share and take the whole of the remainder. Thus the mode of distribution may be inferred in any instance of an equal or unequal number of brothers and sisters dissimilar in rank.

ANNOTATIONS.

Both interpretations are unsuitable 'for, according to the first, if there be one brother and seven or eight sisters,* nothing will remain for the brother, if a quarter must be given to each sister. or, if there be no sister and many brothers, the sister has a greater allotment than a brother, if a quarter must be given to her by each of her brothers, and this is inconsistent with a text, which indicates, that a daughter should have less than a son

Under the second exposition, if there be one sister and numerous brothers, the same objection arises, which was before stated, or, in the case of one brother and seven or eight sister, suppose the amount of the brother's share to be a nishca, the quarter of that is very inconsiderable, and the allotment of shares out of it is still more trifling the terms of the text "giving them, as an allotment, the fourth part," (§ 5) would be impertinent; or, admitting that the precept is observed, still there would be an inconsistency.

But, according to our method since each sister has exactly a quarter of a share, there is nothing contradictory to the terms of the text, "a fourth part" (§ 5) Subodhini

7. Divided into two parts, and one such part . into four] If the text were not so explicit, it might have rather concluded, that the estate should be divided into five parts. one for the sister, and four for the brother. which would be exactly an allotment of a quarter of the amount of a brother's share to a sister. But, according to the distribution exemplified in the text, the sister receives one quarter of that which she would have received, had she been male instead of female. It is, however, in the instance first stated, a seventh only of what her brother actually reserves for himself.

* If there be four sisters, nothing will remain for the brother; if there be a greater number, the allotment of a quarter to each is impossible. C.

9. Nor is it right to interpret the terms of the text ("given the fourth part" § 5) as signifying 'giving money sufficient for her marriage,' by considering the word "fourth" as indefinite. For that contradicts the text of Manu "To the maiden sisters, let their brothers, give portions out of their own allotments respectively: to each the fourth part of the appropriate share; and they, who refuse to give it, shall be degraded."*

9. The allotment of a fourth is not indefinite, intending merely a sufficiency for defraying the charges of the marriage

10. The sense of this passage is as follows Brothers, of the sacerdotal and other tribes, should give to their sisters belonging to the same tribes, portions out of their own allotments; that is, out of the shares ordained for persons of their own rank, as subsequently explained.† They should give to each sister a quarter of their own respective allotments. It is not meant, that a quarter should be deducted from the share of each and be given to the sister. But, to each maiden, should be severally allotted the quarter of a share ordained for a son of the same class. The mode of adjusting the division, when the rank is dissimilar and the number unequal, has been stated: and the allotment of such a share appears to be indispensably requisite, since the refusal of it is pronounced to be a sin; "They, who refuse to give it, shall be degraded." (§ 9)

10. Explanation of a text of Manu of like import.

11. If it be alleged, that, here also, the mention of a quarter is indeterminate, and the allotment of property sufficient to defray the expenses of the nuptials is all which is meant to be expressed: the

11. An objection answered

ANNOTATIONS.

This is consonant] Medhatithi's interpretation of a parallel passage of Manu ‡ where he observes, that 'if the maiden sisters be numerous, the portions are to be adjusted at the fourth part of an allotment for a brother of the same class. thus the meaning is let the son take three parts, and let the damsel take the fourth.'

9. For her marriage] Saukara (§ 3.) signifies in this instance, marriage. since the previous ceremonies are not performed for females, but only for male children Subodhini, &c.

"Out of their own allotments respectively."] A difference in the reading of this passage is remarked in the notes on Jimuta-vahana (C. 3. Sect. 2. § 36) A further variation occurs in the commentary by Medhatithi, who reads Svabhyah "to their own sisters;" that is, 'sisters of their own classes respectively'

"To each the fourth part of the appropriate share."] This part of the text is understood differently by Jimuta-vahana. C. 3 Sect. 2. § 36.

* Manu, 9. 118. † Sect. 8. § 4. ‡ Vide infra. § 9.

answer is, no ; for there is not any proof, that the allotment of a quarter of a share is indefinite in both codes ; and the withholding of it is pronounced to be a sin.

12. As for what is objected by some, that a sister, who has many brothers, would be greatly enriched, if the allotment of a [fourth*] part were positively meant ; and that a brother, who has many sisters, would be entirely deprived of wealth ; the consequence is obviated in the manner before explained.† it is not here directed, that a quarter shall be deducted out of the brother's own share and given to his sister, whence any such consequence should arise.

12. A further objection confuted.

13. Hence the interpretation of Medhatithi who has no compeer, as of other writers, who concur with him, is square and accurate ; not that of Bharuchi.

13. Medhatithi's doctrine is right, not Bharuchi's.

14. Therefore, after the decease of the father, an unmarried daughter participates in the inheritance But, before his demise, she obtains that only, whatever it be, which her father gives ; since there is no special precept respecting this case. Thus all is unexceptionable.

14. Before the father's demise, a daughter can have only what he pleases to give her.

SECTION VIII.

Shares of Sons belonging to different tribes.

1. The adjustment of a distribution among brothers alike in rank, whether made with each other, or with their father, has been propounded in preceding passages ("When the father makes a partition, &c"‡) The author now describes partition among brethren dissimilar in class : "The sons of a Brahmana, in the several tribes, have four shares, or three, or two, or one , the children of a Kshatriya have three portions, or two, or one ; and those of a Vaisya take two parts, or one."§

1 Partition among sons by women of different tribes, declared by Yajnavalkya.

ANNOTATIONS.

11. In both codes.] In the text of Yajnavalkya and in that of Manu. Subodhini

Pronounced to be a sin.] In Manu's text (§ 9) Balam-bhatta.

13. Who has no compeer.] Who is independent of control. Balam-bhatta.

This commentator treats Asahaya as an epithet of the author next named (Medhatithi.) The word occurs, however, as a proper name in the Vivada-ratnakara in commenting on a passage of Manu (9. 165) The meaning may be that 'the opinion of Asahaya, Medhatithi, and the rest is accurate . not that of Bharuchi.'

* Balam-bhatta. † § 6. ‡ Section 2. § 1. § Yajnavalkya, 2. 126.

2. Under the sanction of the law,* instances do occur of a Brahmana having four wives ; a Kshatriya, three ; and a Vaisya, two : but a Sudra, one. In such cases, the sons of a Brahmana, born to him by women of the several tribes, shall have four shares, three, two, or one, in the order of these tribes.

2. Explanation of the text.

3. The several tribes (varnasas)] Women of the different classes the sacerdotal and the rest, are here signified by the word tribe (varna.) The termination sas, subjoined to a noun in the singular number and locative or other case, bears a distributive sense, conformably with the grammatical rule.†

3. Etymology of a term contained in it.

4. The meaning here expressed is this : The sons of a Brahmana, by a Brahmani woman, take four shares apiece . his sons by a Kshatriya wife receive three shares each ; by a Vaisya woman, two ; by a Sudra, one.

4. Distribution among the sons of a Brahmana.

5. The sons of a Kshatriya, born to him by women of the several tribes, (for that is here understood) have three shares or two, or one, in the other of the tribes : that is, the sons of a Kshatriya man, by a Kshtriya woman, take three shares each ; by a Vaisya woman, two ; by Sudra wife, one.

5. Among the sons of a Kshatriya.

6. The sons of a Vaisya, by women of the several tribes, (for here, again, the same term is understood,) have two shares, or one, in the order of the classes : that is, the sons of a Vaisya man, by a Vaisya woman, take two shares apiece ; by a Sudra woman, one.

6. Among the sons of a Vaisya

7. Since a man of the servile tribe cannot have a son of different class from his own, because one wife only is allowed to him, (for "a Sudra woman only must be the wife of a Sudra man ;"‡) partition among his children takes place in the manner beforementioned.

7. Among the sons of a Sudra.

ANNOTATIONS.

Medhatithi is a celebrated commentator on Manu and his exposition of Manu's text ($ 9.) agrees with the author's explanation of Yajnavalkya's (§ 5)

Bharuchi, an ancient author, probably maintained the opinion and interpretation which are refuted in the present Section.

2. Under the sanction of the law] The initial words of a passage of Yajnavalkya (1 57.) are cited in the text, for the sanction of the practice here noticed

3. Conformably with the grammatical rule.] The author quotes a rule of grammar, (Panini, 5, 4, 43.

7. In the manner beforementioned.] As directed by the texts above cited, (Yajnavalkya, 2. 115 and 118. Vide Sect. 2. and 3) Subodhini.

* Yajnavalkya, 1. 57. † Panini, 5. 4. 43. ‡ Manu. 8. 18.

8. *Although no restriction be specified in the text* (§ I.), *it must be understood to relate to property other than land obtained by the acceptance of a gift.* For it is declared [by Vrihaspati*] "Land obtained by acceptance of donation, must not be given to the son of a Kshatriya or other wife of inferior tribe: even though his father give it to him, the son of the Brahmani may resume it, when his father is dead."

8. Land received in gift is exclusively taken by the Brahmani's son as directed by Vrihaspati.

9. Since acceptance of donation is here expressly stated, land obtained by purchase or similar means appertains also to the son of a Kshatriya or other inferior woman For the son by a Sudra woman is specially excepted ("The son, begotten on a Sudri woman by any man of a twice-born class, is not entitled to a share of land"†) Now, if land acquired by purchase and similar means did not belong to the sons of a Kshatriya or Vaisya wife, the special exception of a son by a Sudra woman would be impertinent

9. Acquired by other means, as purchase, &c. it is shared by the sons of the Kshatriya and Vaisya; but not by the Sudra's son

10. But the following text. "The son of a Brahmana, a Kshatriya, or a Vaisya, by a woman of the servile class, shall not share the inheritance; whatever his father may give him, let that only be his property "‡ relates to the case where something, however inconsiderable, has been given by the father, in his life-time, to his son by a Sudra woman But, if no affectionate gift have been bestowed on him by his father, he participates for a single share [of the moveables] Thus there is nothing contradictory.

10 The entire exclusion of the son by a Sudra woman, as ordained by Manu, supposes something to have been bestowed on him by his father

Else he shares the moveables.

ANNOTATIONS.

9 Begotten on a Sudri woman] Sudri does not here bear its regular signification of 'wife of a Sudra man,' but intends a wife of the regenerate man, being a Sudra woman Subodhini and Balam-bhatta

The special exception of a son by a Sudra woman would be impertinent.] Since the son of the Sudra is specially excepted, it follows, that the sons of the Kshatriya wife and those of the Vaisya do participate, Subodhini

10 Where something . has been given] Where an affectionate gift has been bestowed. In some copies, the reading is so (prasada-dattam in place of pradattam) Balam-bhatta.

* Balam-bhatta supplies the author's name

† This also is a passage of Vrihaspati See Jimuta-vahana, Ch 9. § 22

‡ Manu, 9 155.

SECTION IX.

Distribution of effects discovered after partition.

1 Yajnavalkya directs the distribution of goods which were withheld from partition

1 Something is here added respecting the residue after a general distribution of the estate.

"Effects which have been withheld by one co-heir, from another, and which are discovered after the separation, let them again divide in equal shares: this is a settled rule."*

2 When discovered, they shall be divided.

2. What had been withheld by co-parceners from each other, and was not known at the time of dividing the aggregate estate, they shall divide in equal proportions, when it is discovered after the partition of the patrimony. Such is the settled rule or maxim of the law.

3 In equal shares, by all the co-heirs.

3 Here, by saying "in equal shares" the author forbids partition with deductions. By saying "let them divide," he shows, that the goods shall not be taken exclusively by the person who discovers them.

4. The embezzlement was an offence

4. Since the text is thus significant, it does not imply, that no offence is committed by embezzling the common property.

5 Is it so, only if committed by an elder brother, as in a passage of Manu?

5. Is it not shown by Manu to be an offence on the part of the eldest brother, if he appropriate to himself the common property; and not so, on the part of younger brothers? "An eldest brother, who from avarice shall defraud his younger brothers, shall forfeit the honours of his primogeniture, be deprived of his [additional] share, and be chastised by the king."†

6 No. If criminal in an elder brother, it is so, a fortiori, in a younger brother.

6. That inference is not correct; for, by pronouncing such conduct criminal in an elder brother who is independent and represents the father it is more assuredly shown (by the argument exemplified in the loaf and staff) to be criminal

ANNOTATIONS.

6. By the argument exemplified in the loaf and staff.] If a staff to which a loaf is attached, be taken away by thieves, it is inferred, that assuredly the loaf also has been stolen by them.‡ So, in the case under consideration, if the eldest, who is independent and represents the father, be criminal for withholding the goods, the same may surely be affirmed concerning the rest, if they do so. Subodhini

* Yajnavalkya, 2. 127. † Manu, 9 213.
‡ See Jimuta-vahana, 2. 25. & 3, 1. 15.

A passage of the Veda declares the guilt in general terms.

in younger brothers, who are subject to the control of the eldest and hold the place of sons. Accordingly it is declared [in the Veda*] to be an offence without exception or distinction : "Him indeed, who deprives an heir of his right share, he does certainly destroy ; or, if he destroy not him, he destroys his son, or else his grandson."†

7. Explanation of that passage.

7. Whoever debars, or excludes, from participation, an heir, or person entitled to a share, and does not yield to him his due allotment ; he, being thus debarred of his share, destroys or annihilates that person who so debars him of his right : or, if he do not immediately destroy him, he destroys his son or his grandson.

8. Embezzlement of common property is criminal in any person.

8. It is thus pronounced to be criminal in any person to withhold common property, without any distinction of eldest [or youngest]

9. The use of it, under the supposition of a right to do so, is argued to be innocent.

9. It is argued, that blame is not incurred by one who takes the goods, thinking them his own, under the notion, that the common property appertains also to him.

10. But still the offence is committed.

10. That is wrong. He does incur blame : for, though he took it thinking it his own ; still he has taken the property of another person, contrary to the injunction which forbids his so doing.

11. An illustration from the Mimansa

11. As in answer to a proposed solution of a difficulty "If an oblation of green kidney beans‡ be not procurable, and black kidney beans§ be used in their stead, by reason of the resemblance, the maxim, which prohibits the employment of these in sacrifices, is not applicable, because they were used by mistake for ground particles of green kidney beans ;" it is on the contrary maintained, as the right opinion, that, 'although the ground particles of green kidney beans be taken is being

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11. As in answer to a proposed solution] The author here adduces an example of reasoning from the Mimansa, in the 6th book (Adhyaya,) 3rd section (pada) and 6th topic (Adhikarana.) Subodhini.

The black kidney bean, with certain other kinds of grain, is declared by a passage of the Veda unfit to be used at sacrifices. An oblation of green kidney beans, by another passage of the same, is directed to be made on certain occasions. If then the green sort be not procurable, may the black kind be used in its stead ? The solution first proposed is, that the black sort may be substituted for the green kind in like manner as

* Balam-bhatta.

† A passage of the Veda, as observed by Balam-bhatta.

‡ Mudga : Phaseolus Mungo , green kidney beans.

§ Masha : Phaseolus Max. v radiatus : blank kidney beans.

unforbidden, still the ground particles of blank kidney beans are also actually employed: and the prohibitory command is consequently applicable in this case.'

12. Therefore it is established, both from the letter of the law and from reasoning, that an offence is committed by taking common property.

12. Conclusion.

SECTION X.

Rights of two Dvyamushyayana or son of two fathers.

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1. Intending to propound a special allotment for the Dvyamushyayana (or son of two fathers,) the author previously describes that relation.

1. The issue of one by the wife of another, is heir to both.

"A son, begotten by one, who has no male issue, on the wife of another man, under a legal appointment, is lawfully heir, and giver of funeral oblations, to both fathers *

2. A son, procreated by the husband's brother or other person (having no male issue), on the wife of another man, with authority from venerable persons, in the manner before ordained, is heir, of both the natural father and the wife's husband: he is successor to their estates, and giver of oblations to them, according to law.

2. Interpretation of Yajnavalkya's text.

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wild rice is used in place of the cultivated sort and, in answer to the argument drawn from the special prohibition, it is pretended, that the prohibition holds against the use of the black kidney bean as such, and not against its use when ground particles of this and other sorts are taken with practicles of green kidney beans as being unforbidden. But the correct and demonstrated opinion is, that the black kind is altogether unfit to be used at sacrifices, being expressly prohibited · its particles, therefore, although intermixed with other sorts, are to be avoided; and for this reasons they must not be used as a substitute for the other kind. Subodhini and Balam-bhatta.

1. Dvyamushyayana, or son of two fathers] As here described, the Dvyamushyayana is restricted to one description of adoptive son, the Kshetraja or son of the wife. but the term is applicable to any adopted son retaining his filial relation to his natural father with his acquired relation to his adoptive parent. See Sect. 11. § 32.

2. In the manner before ordained.] The initial words of another passage of Yajnavalkya are here cited. It is as follows: "Let the husband's brother, or a kinsman near or remote, having been authorized by venerable persons, and being anointed with butter, approach the childless wife at proper seasons, until she become pregnant He, who approaches her in any other mode, is degraded from his tribe A child begotten in that mode, is the husband's son, denominated (kshetraja) son of the wife "†

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* Yajnavalkya, 2. 128 † Yajnavalkya, 1. 69—70.

3. Further explanation of it.

3. The meaning of this is as follows. If the husband's brother, or other person, duly authorized, and being himself destitute of male issue, proceed to an intercourse with the wife of a childless man, for the sake of raising issue both for himself and for the other; the son, whom he so begets, is the child of two fathers and denominated Dvyamushyayana. He is heir to both, and offers funeral oblations to their manes

4. But, if the natural father have other male issue, the child is son of the husband only; as appears from a passage of Manu.

4. But, if one, who has male issue, being so authorized, have intercourse with the wife for the sake of raising up issue to her husband only, the child, so begotten by him, is son of the husband, not of the natural father: and, by this restriction, he is not heir of his natural father, nor qualified to present funeral oblations to his manes It is so declared by Manu "The owners of the seed and of the soil may be considered as joint owner of the crop, which they agree, by special compact, in consideration of the seed, to divide between them"*

5. Exposition of the text.

5. By special compact] When the field is delivered by the owner of the soil to the owner of the seed, on an agreement in this form, "let the crop, which will be here produced, belong to us both;" then the owners both of the soil and of the seed are considered by mighty sages as sharers or proprietors of the crop produced in that ground

6. Another passage of the same author.

6. So [the same author] "Unless there be a special agreement between the owners of the land and of the seed, the fruit belongs clearly to the land-owner; for the soil is more important than the seed."†

7. If there be no stipulation, the child belongs to the mother's husband.

7. But produce, raised in another's ground, without stipulating for the crop, or without a special agreement that it shall belong to both, appertains to the owner of the ground. for the receptacle is more important than the seed; as is observed in the case of cows, mares and the rest.

8. The commission to raise up issue is restricted to an affianced wife, as appears from a comparison of passage of Manu.

8. Here, however, the commission for raising up issue is relative to a woman who was only betrothed, since any other such appointment is forbidden by Manu. For, after thus premising a commission, "On failure of issue, the desired offspring may be procreated, either by his brother or some other kinsman, on the wife who has been duly authorized: anointed with

* Manu, 9. 53.

† Manu, 9. 52.

liquid butter, silent, in the night, let the kinsman, thus appointed, beget one son, but a second by no means, on the widow [or childless wife ;]"* Manu has himself prohibited the practice "By regenerate men, no widow must be authorized to conceive by any other: for they, who authorize her to conceive by any other, violate the primeval law. Such a commission is nowhere mentioned in the nuptial prayers ; nor is the marriage of widows noticed in laws concerning wedlock. This practice, fit only for cattle, and reprehended by learned priests, introduced among men, while Vena had sovereign sway. He, possessing the whole earth, and therefore eminent among royal saints, gave rise to a confusion of tribes, when his intellect was overcome by passion Since his time, the virtuous censure that man, who, through delusion of mind, authorizes a widow to have intercourse for the sake of progeny."†

9. An option must not be inferred from the injunction contrasted with the prohibition.
For Manu enjoins continence to a widow

9 Nor is an option to be assumed from the [contrast of] precept and prohibition Since they, who authorize the practice, are expressly censured : and disloyalty is strongly reprobated in speaking of the duties of women ; and continence is no less praised. This, Manu has shown : "Let the faithful wife emaciate her body by living voluntarily on pure flowers, roots, and fruits ; but let her not, when her lord is deceased, even pronounce the name of another man. Let her continue till death forgiving all injuries, performing harsh duties, avoiding every sensual pleasure, and cheerfully practising the incomparable rules of virtue, which have been followed by such women, as were devoted to one only husband. Many thousands of Brahmanas, having avoided sensuality from their early youth, and having left no issue in their families, have ascended nevertheless to heaven ; and, like those abstemious men, a virtuous wife ascends to heaven, though she have no child, if, after the decease of her lord, she devote herself to pious austerity ; but a widow, who, from a wish to bear children, slights her deacesed husband, brings disgrace on herself here below, and shall be excluded from the abode of her lord."‡ Thus the legislature has forbidden the recourse of a widow or wife to another man, even for the sake of progeny.

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8. The commission..... is relative to a woman who was only betrothed] The commentator, Balam-bhatta, dissents from this doctrine: and cites passages of law to show, that, after troth verbally plighted, should intended husband die before the actual celebration of marriage, the damsel is at the disposal of her father to be given in marriage to another husband. It is unnecessary to go into his explanation of the passages cited in the text, in support of another opinion.

* Manu, 9 59.—60. † Manu, 9. 64—68. ‡ Manu, 5. 157—161.

Therefore it is not right to deduce an option from the injunction contrased with the prohibiton.

10. The authorizing of a woman sanctified by marriage, [to raise up issue to her husband by another man,] being thus prohibited, what then is a lawful commission [to raise up issue?] The same author explains it :

10 Manu explains the occasion on which she may be authorized to raise up issue to her husband.

"The damsel, whose husband shall die after troth verbally plighted, his brother shall take in marriage according to this rule : having espoused her in due form, she being clad in a white robe, and pure in her conduct, let him privately approach her once in each proper season, until issue be had."*

11 Interpretation of the text.

11. It appears from this passage, that he, to whom a damsel was verbally given, is her husband without a formal acceptance on his part If he die, his own brother of the whole blood, whether elder or younger, shall espouse or take in marriage the widow. "In due form," or as directed by law, "having espoused" or wedded her, and "according to this rule," namely with an inunction of clariffed butter and with restraint of voice, &c. let him "privately" or in secret, "approach her, clad in a white robe, and pure in her conduct," that is, restraining her mind, speech and gesture, "once" at a time, until pregnancy ensue.

12 The intercourse of the widow with her husband's kinsman is a nominal marriage

12. These espousals are nominal, and a mere part of the form in which an authorized widow shall be approached ; like the inunction of clarified butter and so forth They do not indicate her become the wedded wife of her brother-in-law.

13. The issue belongs to the husband, or, by special agreement to both.

13. Therefore the offspring, produced by that intercourse, appertains to the original husband, not to the brother-in-law But, by special agreement the issue may belong to both

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9. It is not right to deduce an option] For an option is inferred in the case of equal things but here a censure is passed on those persons, who authorize such a practice, and none upon those who forbid it The injunction and the prohibition are consequently not equal, and therefore an option is not inferred. Subodhini.

12. These espousals are nominal] The notion is this : as an injunction of clarified butter, and other observances, are prescribed as mere forms in approaching an authorized widow, so these espousals are a mere part of that intercourse, and not a principal and substantive act, whence the parties might be supposed to become a married couple. Subodhini and Balam-bhatta.

For the woman cannot become a lawful wedded wife, being twice-married. Balam-bhatta.

13. Therefore the offspring, &c] The child is not a legitimate son (aurasa) of both parents ; but is (kshetraja) son of the soil or wife, and

* Manu, 9. 69—70.

SECTION XI.

Sons by birth and by adoption.

1. Sons by birth and by adoption are described by Yajnavalkya.

1st The legitimate son.

2nd Son of an appointed daughter.

3rd. Son of the wife

4th Son of hidden origin.

5th Son of an unmarried woman.

6th Son of a twice married woman

7th Son given

8th. Son bought

9th Son made

10th Son self-given

11th. Son of a pregnant bride.

12th Son deserted

1. A distribution of shares, among sons equal or unequal in class, has been explained. Next, intending to show the rule of succession among sons principal and secondary, the author previously describes them.

"The legitimate son is one procreated on the lawful wedded wife. Equal to him is the son of an appointed daughter The son of the wife is one begotten on a wife by a kinsman of her husband, or by some other relative. One, secretly produced in the house, is a son of hidden origin. A damsel's child is one born of an unmarried woman: he is considered as son of his maternal grandsire A child, begotten on a woman whose [first] marriage had not been consummated, or on one who had been deflowered [before marriage], is called the son of a twice-married woman. He, whom his father or his mother give for adoption, shall be considered as a son given A son bought is one who was sold by his father and mother. A son made is one adopted by man himself. One, who gives himself, is self-given A child accepted, while yet in the womb, is one received with a bride He, who is taken for adoption, having been forsaken by his parents, is a deserted son."*

2 Exposition of the text

Legitimate son

2 The issue of the breast (uras) is a legitimate son (aurasa). He is one born of a legal wife. A woman of equal tribe, espoused in lawful wedlock, is a legal wife; and a son, begotten [by her husband†] on her, is a true and legitimate son; and is chief in rank.

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appertains to the husband or owner of the soil provided no agreement were made to this effect 'the offspring, here produced, shall belong to us both.' But, if such a stipulation exist, he is son of both Subodhini and Balam-bhatta.

He is not legitimate son (aurasa) of the natural father, but similar to a legitimate son, as will be made evident in the sequel ‡ Balam-bhatta.

1 Son of his maternal grandsire.] In the numerous quotations of this passage, some read sutah "son," others smritah "called," and others again matah "considered" The sense is not materially affected by these differences; as either term, being not expressed must be understood.

2. A son, begotten on a woman of equal tribe.] In fact it is not to be so understood For it contradicts the author's own doctrine, since he

* Yajnavalkya, 2. 129—133. † Balam-bhatta directs this to be supplied in conformity with passages of Vishnu (15 2.) and Manu (9. 166.)

‡ Vide Sect. 11. § 4.

3. Son of an appointed daughter, described by Vasishtha, and daughter appointed to be a son, as also described by Vasishtha.

3. The son of an appointed daughter (putrika-putra) is equal to him; that is equal to the legitimate son. The term signifies son of a daughter. Accordingly he is equal to the legitimate son; as described by Vasishtha. "This damsel, who has no brother, I will give unto thee, decked with ornaments: the son, who may be born of her, shall be my son"* Or that term may signify a daughter becoming by special appointment a son. Still she is only similar to a legitimate son, for she derives more from the mother than from the father. Accordingly she is mentioned by Vasishtha as a son, but as third in rank: "The appointed daughter is considered to be the third description of sons"†

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includes the Murdhavasikta and others, born in the direct order of the tribes, among legitimate issue (§ 41) They are not sons begotten on a woman of equal tribe and, if issue by women of different tribes be not deemed legitimate, being considered as born of wives whom it was not lawful to marry, then it might follow, that other persons would take the heritage, although such sons existed Hence the mention of a wife equal by tribe intends only the preferableness [of her or her offspring] and the restriction, that she be a lawful wife, excludes the kshetraja or issue of the soil, and the rest. Viramitrodaya

The son by a woman of equal tribe espoused in any of the irregular forms of marriage (Asura, &c.) is a legitimate son and the sons of a Brahmana, by wives espoused in the direct order of the classes (Kshatriya, &c.), denominated the Murdhavasikta, the Ambashtha, and the Parasava or Nishada, and the sons of a Kshatriya by wives of the Vaisya or Sudra tribe, named the Mahishya and the Ugra; and the son of a Vaisya by a Sudra woman called the Karana, are all legitimate sons. Visvesvara bhatta in the Madana-Parijata.

By the term "lawful" is excluded a woman espoused by one to whom such marriage was not permitted therefore the sons by women of superior tribe are not legitimate, and, for this purpose, the word "lawful" has been introduced into the text (§ 1.) A lawful wife for a man of a regenerate tribe is a woman of a regenerate tribe, and, for a Sudra man, a Sudra woman For want of a wife of preferable description, one analogous is allowed. Consequently it is not indispensable, that the wife be of the preferable description Even a Sudra woman may be the wife of a regenerate man, and her issue is legitimate, as will be shown. Balam-bhatta.

3. Equal to the legitimate son.] The daughter appointed to be a son, and the son of an appointed daughter are either of them equal to the legitimate son. Visvesvara in the Madana Parijata.

Since the son of an appointed daughter is son of legitimate female issue, therefore he is equal to a legitimate son · but he is not literally a legitimate son, being one remove distant Visvesvara in the Subodhini.

Or that term may signify, &c] It may signify a daughter who becomes by appointment a son; that is, who is put in place of a son. Although she be legitimate yet being female, she is merely equal to a son. Viramitrodaya.

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* Vasishtha, 17. 16. † Vasishtha, 17. 14.

4. The son of two fathers (dvyamushyayana)* is inferior to the natural father's legitimate son, because he is produced in another's soil.

4. Son of two fathers (Sect.10.)

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"Equal to him," equal to the legitimate son, is the putrika-putra or daughter appointed to a son for, since all the terms of the definition of a legitimate son, excepting sex, are applicable to her, she is similar to him. Apararka.

The Putrika-putra is of four descriptions. The first is the daughter appointed to be a son. She is so by a stipulation to that effect. The next is her son. He obtains of course the name of 'son of an appointed daughter,' without any compact. This distinction, however, occurs he is not in place of a son, but in place of a son's son, and is a daughter' son. Accordingly he is described as a daughter's son in the text of Sankha and Lakhita: "An appointed daughter is like unto a son, as Prachetasa has declared her offspring is termed son of an appointed daughter he offers funeral oblations to the maternal grandfathers and to the paternal grandsires There is no difference between a son's son and a daughter's son, in respect of benefits conferred." The third description of son of an appointed daughter is the child born of a daughter who was given in marriage with an express stipulation in this form "the child, who shall be born of her, shall be mine for the purpose of performing my obsequies"† He appertains to his maternal grandfather as an adopted son. The fourth is a child born of a daughter who was given in marriage with a stipulation in this form "The child, who shall be born of her, shall perform the obsequies of both" He belongs, as a son, both to his natural grandfather and to his maternal grandfather But, in the case where she was in thought selected for an appointed daughter ‡ she is so without a compact, and merely by an act of the mind. Hemadri.

The son of the appointed daughter belongs in general only to the maternal grandfather, but, by special compact, to the natural father also. Thus Yama says 'Let the son of an appointed daughter perform the obsequies of his maternal ancestors exclusively but, if he succeed to the property of both, let him perform the obsequies of both." Accordingly this child also is denominated dvyamushyayana or son of two fathers. Balam-bhatta.

"The appointed daughter is the third description of sons."] "For she, who has no brother, reverts to her male ancestors and obtains a renewed filiation." Vasishtha.§

The adopted daughter is counted by Vasishtha as the third: not by Yajnavalkya. Subodhini

Mitra-misra reads second instead of third · against the authority of the institutes and of every compiler who has cited this passage.

4. Is inferior to the legitimate son] He is similar to the son of the body. Balam-bhatta.

Is not the son of two fathers the offspring of his natural father? Is he then a legitimate son? or one or other of the various descriptions of adoptive and secondary sons? Anticipating this question, the author says: "He is not different from him," he is equal to a son of the body. Subodhini.

The commentary last cited reads avicishta "not different" instead of apakrishta 'inferior' Both readings are noticed by Balam-bhatta.

* Vide Sect. 10.
† Manu, 9. 127.
‡ Manu, 9 136.
§ Vasishtha, 17. 15.

5. Son of the wife.

5. A child, begotten by another person, namely by a kinsman, or by a brother of the husband is a wife's son (kshetraja.)

6. Son of hidden origin.

6. The son of hidden origin (gudhaja) is one secretly brought forth in the husbands's house By excluding the case of a child begotten by a man of inferior or superior tribe, this must be restricted to an instance where it is not ascertained who is the father, but is not ascertained who is the father, but it is certain that he must belong to the same tribe

7. Son of an unmarried woman, described by Manu.

7 A damsel's child (kanina) is the offspring of an unmarried woman by a man of equal class (as restricted in the preceding instance) and he is son of his maternal grandfather, provided she be unmarried, and abide in her father's house. But, if she be married, the child becomes son of her husband So Manu intimates ; " A son, whom a damsel conceives secretly in the house of her father, is considered as the son of her husband, and denominated a damsel's son, as being born of an unmarried woman "*

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5. A child, begotten, by another person.... .is a wife's son] There are two descriptions of kshetraja or wife's son , the first of them is son of both father (dvipitika .) the other is adopted son of the wife's husband Viramitrodaya.

A son begotten, under a formal authority, by a kinsman being of equal class, or by another relative, is a wife's son. Visvesvara in the Madana-Parijata.

6. He must belong to the same tribe] A child secretly conceived by a woman, in her husband's house, from a man of the same tribe, but concerning, whom it is not certainly known who the individual was, is named a son of concealed origin. The ignorance as to the particular person must be the husband's, not the wife's and the knowledge of her equality in tribe may be obtained through her . for surely she must know who he is But, if she really do not know his tribe, having been secretly violated by a stranger [in a dark night,†] then the child bears the name of a son of hidden origin, but is not so fit a son as the one before described. Visvesvara in the Madana-Parijata.

In such circumstances, the child must be abandoned, say others. Balam-bhatta.

Since the natural father is not known, the child belongs to the same tribe with his mother. But, if there be a suspicion, that he was begotten by a man of inferior tribe, he is contemned Vachaspati misra in the Sraddha-chintamani

A son, who is born of the wife, and concerning whom it is not certainly known who is the natural father, is adoptive son of the mother's husband, and called son of concealed origin Being son of the adoptive father's own wife and begotten on her by another man, he is similar to the son of the wife, and therefore described after him. Aparарka.

7. [By a man of equal class] As the son before described must be one begotten by a man of like tribe, so must this son also be the offspring of a man of equal class. " Damsel " does not here signify unmarried

* Manu, 9. 172.

† Balam-bhatta.

8. Son of a twice-married woman.

8. The son of a woman twice-married is one begotten by a man of equal class, on a twice-married woman, whether the first marriage had or had not been consummated.

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only for, even with that import, the term is frequently used in the sense of 'unconnected with man." But it signifies a woman with whom a regular marriage has not been consummated. Balam-bhatta.

The meaning of the passage of the Mitakshara is thus "'Unmarried' signifies one, whose nuptials have not been commenced, "married," whose nuptials are begun. The affix here implies an act begun and not past. For a child begotten by a paramour alike in class on a woman whose marriage is complete, is a son of concealed origin. Viramitrodaya

The child, born of an unmarried woman, is denominated son of a damsel, and is considered by Manu and the rest as son of his maternal grandfather. Being produced in a soil which in some measure appertains to him, namely his daughter, the child is similar to the son of concealed origin, and is therefore mentioned by Yajnavalkya next after him. Apararka.

If the maternal grandfather have no male issue, then the damsel's son is deemed his son, if he have issue, then the child is son of the husband. If both be childless, he is adoptive son of both. Parijata cited in the Ratnakara and Suddhi-viveka.

If either of them be destitute of male issue, the child is his son, but if both be so, the child is son of both. Balam-bhatta.

So Manu intimates] The meaning of the passage cited from Manu is as follows a young woman betrothed, but whose nuptials have not been completed, and who is consequently a maiden, since she is not yet become the wife of her intended husband a son (we say) borne by such a damsel is denominated a damsel's child, and is considered as son of the bridegroom; that is, of the person by whom she is espoused. Accordingly the condition "in the house of her father" is pertinent as an explanatory phrase for, after marriage, she inhabits the house of her husband. Viramitrodaya,

8. Whether, &c.] Whether this marriage had or had not been consummated by the first husband, and whether she have been forsaken by her husband in his life time or be a widow Such is the meaning. Accordingly Vishnu so declares: "He, whom a woman, either forsaken by her husband, or a widow, and again becoming a wife by her own choice, conceived [by a second husband,] is called the son of a woman twice-married."* The child is son of the natural father for the first husband's right to the woman is annulled by his death or relinquishment, and she has not been authorized to raise up issue to him, and she takes a second husband solely by her own choice. Balam-bhatta.

There are two descriptions of twice-married women the first is a woman whose marriage has not been consummated. but only contracted and who is espoused by another man. The other is a woman who has been blemished by intercourse with a man, before marriage. The offspring of such a woman is paunar-bhava son of a twice-married woman. Accordingly it is so expressed in the text Viramitrodaya.

"A woman, whose marriage had not been consummated, and who is again espoused, is a twice-married woman. So is she, who had previous intercourse with another man, though she be not actually married a second time." Vishnu.†

* Manu, 9 175. Erroneously cited as a passage of Vishnu.
† Vishnu, 15, 8.—9.

9. He, who is given by his mother with her husband's consent, while her husband is absent, [or incapable though present,*] or [without his assent†] after her husband's decease, or who is given by his father, or by both, being of the same class with the person to whom he is given, becomes his given son (dattaka) So Manu declares: "He is called a son given (dattrima,) whom his father or mother affectionately gives as a son, being alike [by class,] and in a time of distress, confirming the gift with water "‡

9 Son given described by Manu.

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A child begotten "on a woman, whose [first] marriage had not been consummated," on the wife of an impotent man or the like, whether she have become a widow or not, or on his own wife "who had been deflowered," had been enjoined by strangers, and who is taken back, and again espoused; the child (we say) begotten on such a woman, is called 'son by a woman twice-married' The twice-married woman has been described in the first book [of Yajnavalkya's Institutes,] Apararka

"Whether a virgin or deflowered, she who is again espoused with solemn rites, is a twice-married woman but she, who deserts her husband and through lust co-habits with another man of the same tribe, is a self guided woman." Yajnavalkya.§

There are two descriptions of women termed anyapurva‖ or previously connected with another namely the punarbhu or women twice-married and the svairini or self-guided and unchaste woman The twice-married woman also is of two descriptions, according as she has or has not been deflowered. She, who is not a virgin, is blemished by her intercourse with man before the nuptial ceremony she, who is yet a virgin, is blemished by the repetition of the ceremony of marriage. But one, who deserts the husband of her youth, and through desire co-habits with another man of the same tribe, is a self-guided woman (svairini) Mitakshara ‖

A woman, who, having been married, whether she be yet a virgin or not, is again espoused in due form by her original husband or by another is a twice-married woman. She is so described by Manu "If she be still a virgin, or if she left her original husband and return to him, she may again perform the marriage ceremony with her second [or, in the latter case, her original] husband "¶ and by Vasishtha, "She, who, having deserted the husband to whom she was married in her youth, and having cohabited with others, returns to his family, is a twice-married woman. Or she, who deserts a husband impotent, degraded or insane, and marries another husband, or does so after the death of the first, is a twice-married woman."** The repetition of the nuptial ceremony constitutes her a twice-married woman. But she, who leaves her husband and through desire co-habits, without marriage, with a man of the same tribe, is a self-guided woman. Apararka.

9. He, who is given by his mother with her husband's consent] Vasishtha says, "Let not a woman either give or accept a son, unless with the assent of her husband "†† He had before said "Man, produced from virile seed and uterine blood, proceeds from his father and his mother, as an effect from its cause. Therefore both his father and his mother have power to give, to sell, or to abandon their son.‡‡

* Balam-bhatta † Balam-bhatta ‡ Vasishtha, 15. 4.
§ Yajnavalkya, 1. 68. ‖ Same with parapurva See Manu, 5 163.
¶ On Yajnavalkya, 1 68 ** Manu 9 176. †† Vasisshtha, 17 18—19.
‡‡ Vasishtha, 15. 1—2.

10. Distress is requisite to justify a parent in giving away his offspring.

10. By specifying distress, it is intimated, that the son should not be given unless there be distress. The prohibition regards the giver [not the taker.]*

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Concerning the mother's authority to give away her son, when she is a widow, see a subsequent note. In regard to a widow's power of adopting a son, there is much diversity of opinions. Vachaspati misra, who is followed by the Maithila school, maintains that neither a woman, nor a Sudra, can adopt a dattaka or given son, because the prescribed ceremony (§ 13) includes a sacrifice, which they are incapable of performing. This difficulty may be obviated by admitting a substitute for the performance of that ceremony and accordingly adoption by a woman, under an authority from her husband, is allowed by writers of the other schools of law. Nanda pandita, however, in his treatise on adoption, restricts this to the case of a woman whose husband is living, since a widow cannot, he observes, have her husband's sanction to the acceptance of a son. On the other hand, Balam-bhatta contends, that a woman's right of adopting, as well as of giving, a son, is common to the widow and to the wife. This likewise is the opinion of the author of the Vyavahara-mayukha but, while he admits, that a widow may adopt a son without her husband's previous authority, he requires, that she should have the express sanction of his kindred. Writers of the Gaura school, on the contrary, insist on a formal permission from the husband declared in his life-time.

Being of the same class with the person to whom he is given.] Or being given to a person of the same class. The two readings, (savarnaya in the dative, or savarno yah in the nominative,) both noticed by the commentator Balam-bhatta, give the same sense.

The adopted son must be of the same tribe with the giver or natural parent as well as with the adoptive parent, according to the remark of Apararka cited with approbation by Nanda pandita in his treatise on adoption.

Becomes his given son.] The son given (dattaka or dattrima) is of two sorts; 1st simple, 2nd son of two fathers (dvyamushyayana) The first is one bestowed without any special compact, the last is one given under an agreement to this effect "he shall belong to us both." Vyavahara-mayukha

"Whom his father or mother gives" Medhatithi reads and interprets "whom his father and mother give," (inserting the conjunctive particle cha instead of the disjunctive va) Balam-bhatta condemns that reading; and infers from the disjunctive particle and dual number in the text, that three cases are intended, viz 1st The mother may give her son for adoption with her husband's consent, if he be absent or incapable, and without it, if he be dead or the distress be urgent. 2d. The father may give away his son without his wife's consent, if she be dead, or insane, or otherwise incapable, but, with her consent, it she reside in her own father's house. 3d. The father and mother may conjointly give away their son, if they be living together

"Whom his father or mother affectionately gives."] Amicably not from avarice or intimidation In the Viramitrodaya, the word is expressly stated to be used adverbially but Balam-bhatta considers it as an epithet of the son to be adopted, and as implying, that the adoption is not to be made against his will or without his free consent.

10. By specifying distress.] "Distress" is explained in Prakasa cited by Chandesvara, 'inability [of the natural father] to maintain his offspring.'

* Manu, 9. 168.

11. The person must not be an only son: so Vasishtha

11. So an only son must not be given [nor accepted *] For Vasishtha ordains "Let no man give or accept an only son."†

12. Nor the eldest son according to Manu.

12 Nor, though a numerous progeny exist, should an eldest son be given for he chiefly fulfils the office of a son, as is shown by the following text "By the eldest son, as soon as born, a man becomes the father of male issue "‡

13 The form to be observed in this adoption is described by Vasishtha

13 The mode of accepting a son for adoption is propounded by Vasishtha "A person, being about to adopt a son, should take an unremote kinsman or the near relation of a kinsman, having convened his kindred and announced his intention to the king and having offered a burnt offering with recitation of the holy words, in the middle of his dwelling "§

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Nanda pandita, in his treatise on adoption, expounds it as intending the necessity for adoption arising from the want of issue. But Balam-bhatta rejects this, and supports the other interpretation, explaining the term as signifying 'famine or other calamity'

"Being alike"] This is interpreted by Medhatithi as signifying 'alike, not by tribe, but by qualities suitable to the family accordingly a Kshatriya, or a person of any other inferior class, may be the given son (dattaka) of a Brahmana' Balam-bhatta and the author of the Mayukha censure this doctrine since every other authority concurs in restricting adoption to the instance of a person of the same tribe.

This prohibition regards the giver] If he give away his son, when in no distress, the blame attaches to him, not to the taker. Balam-bhatta.

11 So an only son should not be given] Nor should such a son be accepted The blame attaches both to the giver and to the taker, if they do so. Balam-bhatta

"Let no man give or accept an only son."] "For he is [destined] to continue the line of his ancestors" Such is the sequel of Vasishtha's text. Balam-bhatta (c)

13. The mode of accepting a son .. is propounded by Vasishtha.] Raghunandana, in the Udvaha-tatva, has quoted a passage from the Kalika-purana, which, with the text of Vasishtha,† constitutes the groundwork of the law of adoption, as received by his followers They construe the passage as an unqualified prohibition of the adoption of a youth or child whose age exceeds five years and especially one whose initiation is advanced beyond the ceremony of tonsure. This is not admitted as a rigid maxim by writers in other schools of law, and the authenticity of the passage itself, is contested by some, and particularly by the author of the Vyavahara Mayukha, who observes truly, that it is wanting in many copies of the Kalika-purana Others, allowing the text to be genuine, explain it in a sense more consonant to the general practice, which permits the adoption of a relation, if not of a stranger, more advanced both in age and in progress of initiation. The following version of the passage conforms with the interpretation of it given

* Subodhini and Balam-bhatta. † Balam-bhatta.
‡ Vasishtha, 15 3. § Manu, 9. 106.

14. An unremote kinsmen.] Thus the adoption of one very distant by country and language, is forbidden.

14. Explanation of the text.

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by Nanda Pandita in the Dattaka-mimansa. "Sons given and the rest, though sprung from the seed of another, yet being duly initiated [by the adopter] under his own family name, become sons [of the adoptive parent.] A son, having been regularly initiated under the family name of his [natural] father, unto the ceremony of tonsure, does not become the son of another man When indeed the ceremony of tonsure and other rites of initiation are performed [by the adopter] under his own family name, then only can sons given and the rest be considered as issue · else they are termed slaves. After their fifth year, O King, sons are not to be adopted, [But,] having taken a boy five years old. the adopter should first perform the sacrifice for male issue."‡

The putreshti or sacrifice for male issue, mentioned at the close of this passage, is a ceremony performed according to the instructions contained in the following text of the Veda . " He who is desirous of issue, should offer to fire parent of male offspring, an oblation of kneaded rice roasted upon eight potsherds , and to Indra father of male offspring, a similar oblation of rice roasted on eleven potsherds fire grants him progeny , Indra renders it old."

" An unremote kinsman or the near relation of a kinsman."] This very obscure passage, which is variously read and interpreted, is here translated according to the elaborate gloss of Nanda Pandita in his treatise entitled Dattaka mimansa. Yet the same writer in his commentary on Vishnu (15. 19), citing this passage, gives the preference to another reading (adura-bandhavam asannikrshtam eva), which he expounds 'one whose whole kindred dwell in a near country, and one not connected by affinity.' Which of these readings he has adopted in his commentary on the Mitakshara, is not ascertained. From a remark in the text (§ 14.), the author himself, Viajnanesvara, appears to have read and understood it differently . " Should take, in the presence of his kin, one whose kinsmen are not remote." Four copies of the Mitakshara exhibit the reading, adura-bandhavam bandhu-sannikrshta eva. But the commentator Balam-bhatta seems to have read, as the Dattaka mimansa, bandhu-sannikrshtam (in the accusative instead of the locative ,) though he explains the terms a little differently and transposes them : 'should take a kinsmen nearly related (bandhu-sannikrshtam), as a brother's son or the like ; but, on failure of such, one whose kinsmen are not remote (adura-bandhavam); that is, any other person, whose father and the rest of his relations abide in a near country and whose family and character are consequently known The authors of the Kalpataru and Ratnakara read, like the scholiast of Vishnu, adure bandhavam asannikrshtam eva, and thus interpret the passage ' should take one whose kinsmen, namely his maternal uncle and the rest, are near, [and whose name and tribe, with other particulars, can therefore be ascertained ; or, for want of such kindred,§] even one whose good or bad qualities are not known, [or one whose kinsmen are not at hand ; for his name and family may be ascertained by other sufficient proof.'‡]

"Announced his intention to the king."] Raja or king, usually signifying the sovereign is here restricted, according to the remark of Nanda Pandita, to the chief of the town or village.

* Vasishtha, 15 5. † Vasishtha, 15. 1—7. See preceding quotations, ‡ Kalika-purana. c. autepenult.

15. The same [ceremonial of adoption*] should be extended to the case of sons bought, self-given, and made [as well as that of a son deserted†]: for parity of reasoning requires it.

15. The same rules applicable to adoption by purchase, &c.

16. The son bought (krita) is one who was sold by his father and mother, or by either of them: excepting as before an only son or an eldest one, and supposing distress and equality of tribe. As for the text of Manu, ("He is called a son bought, whom a man, for the sake of having issue, purchases from his father and mother: whether the child be equal or unequal to him,"‡) it must be interpreted 'whether like or unlike in qualities;' not in class: for the author concludes by saying: "This law is propounded by me, in regard to sons equal by class."§

16. Son bought; described by Manu.

17. The son made (kritrima) is one adopted by the person himself, who is desirous of male issue; being enticed by the show of money and land, and being an orphan without father or mother: for, if they be living, he is subject to their control.

17. Son made.

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"In the middle of his dwelling."] The sequel of Vasishtha's text is as follows. "But, if doubt arise, let him set apart [without initiation and with a bare maintenance] like a Sudra, one whose kindred are remote. For it is declared [in the Veda] Many are saved by one."§

15. The same ceremonial.] Excepting the sacrifice or burnt offering. However, even that is to be performed at the adoption of a son self-given. Balam-bhatta.

16. As for the text of Manu, &c] Sulapani, on the other hand, expounds Yajnavalkya by Manu, and admits the inequality of tribe. 'A child, sold by his father and mother, and received for adoption, is a son bought He may be of dissimilar tribe for the text [of Manu] expresses "equal or unequal"¶ Chandesvara quotes the following discordant interpretations: "Equal," belonging to the same tribe, or, if that be not practicable, one unequal, or not appertaining to the same tribe So the Parijata** But the author of the Prakasa observes. Though the text express "unequal," yet a child of a superior tribe must not be taken as a son, by a man of inferior tribe, nor one of inferior class, by a man of a higher tribe And the words "equal or unequal." as interpreted by Medhatithi, are relative to similarity in respect of qualities.'††

17. The son made.] One bereft of father and mother and belonging to the same tribe with the adopter, and by him adopted, being enticed to acquiesce by the show of wealth, is a son made by adoption. Visvesvara in the Madana-Parijata.

The form, to be observed, is this. At an auspicious time, the adopter of a son, having bathed, addressing the person to be adopted, who has also bathed, and to whom he has given some acceptable chattel, says "Be my son." He replies "I am become thy son." The giving of some chattel to him arises merely from custom. It is not necessary to the adoption. The consent of both parties is the only requisite, and a set form a speech is not essential. Rudradhara in the Suddhiviveka

* Vivada-Ratnakara † Subodhini. ‡ Balam-bhatta. § Manu, 9. 174.
‖ Yajnavalkya, 2. 134, Vide § 37. ¶ Vasishtha, 15. 6—7.
** Dipakalika on Yajnavalkya. †† Vivada Ratnakara.

18. Son given.

18. The son self-given is one, who, being bereft of father and mother, or abandoned by them [without cause*] presents himself, saying "Let me become thy son."

19. Son of a pregnant bride.

19. The son received with a bride, is a child, who, being in the womb, is accepted when a pregnant bride is espoused. He becomes son of the bridegroom.

20 Son deserted

20. A son deserted (apaviddha) is one, who, having been discarded by his father and mother, is taken for adoption. He is son of the taker. Here, as in every other instance, he must be of the same tribe with the adoptive father.

21 Order in which these different sons succeed to an inheritance as declared by Yajnavalkya.

21. Having premised sons chief and secondary, the author explains the order of their succession to the heritage:

"Among these, the next in order is heir and presents funeral oblations on failure of the preceding."†

22 Interpretation of the text

22. Of these twelve sons abovementioned, on failure of the first, respectively, the next in order, as enumerated, must be considered to be the

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18. The son self-given] He, who, unsolicited, gives himself saying "let me become thy son," is called a son self-given (svayandatta). Apararka.

Here also it is requisite, that he belongs to the same tribe with his adoptive father. Visvesvara in the Madana Parijata.

'He who has lost his parents, or been abandoned by them without cause, and offers himself to a man as his son, is called a son self-given." Manu.‡

Being abandoned by his father and mother without any sufficient cause such as degradation from class or the like but merely inability to maintain him during a dearth, or for a similar reason. Viramitrodaya.

22. Of these twelve sons.] The various modes of adoption, added to the legitimate son by birth, raise the number of descriptions of sons to twelve, according to most authorities That number is expressly affirmed by Manu,§ Narada, || Vasishtha,¶ Vishnu,** &c. A passage is however quoted from Devala, asserting the number of fifteen ("The descriptions of sons are ten and five,") and Vrihaspati is cited as alleging the authority of Manu for thirteen . "Of the thirteen sons, who have been enumerated by Manu in their order, the legitimate son and appointed daughter are the cause of lineage. As oil is declared to be a substitute for liquid butter, so are eleven sons by adoption substituted for the legitimate son and appointed daughter." Nanda Pandita, in his commentary on Vishnu, observes, that 'the number of thirteen specified by Vrihaspati, and that of fifteen by Devala, intend sub-divisions of the species, not distinct kinds: consequent-

* Balam-bhatta † Manu, 9. 134. ‡ Vasishtha, 15. 8.
§ Manu, 9. 158. || Narada, 13. 44. ¶ Vasishtha, 17. 11. ** Vishnu, 15. 1.

giver of the funeral oblation or performer of obsequies, and taker of a share or successor to the effects.

23. An appointed daughter shares with a legitimate son, according to a passage of Manu.

23. If there be a legitimate son and an appointed daughter, Manu propounds an exception to the seeming right of the legitimate son to take the whole estate: "A daughter having been appointed, if a son be afterwards born the division of the heritage must in that case be equal: since there is no right of primogeniture for the woman."*

24. Others have a quarter of a share, as directed by Vasishtha.

24. So the allotment of a quarter share to other inferior sons, when a superior one exists, has been ordained by Vasishtha: When a son has been adopted, if a legitimate son be afterwards born, the given son shares a fourth part "† Here the mention of a son given is intended for an indication of others also, as the son bought, son made by adoption, and [son self-given‡ and] the rest for they are equally adopted as son.

25. Katyayana allots to them the same portion; provided they be of equal class: else, food and raiment only.

25. Accordingly Katyayana says, "If a legitimate son be born, the rest are pronounced sharers of a fourth part, provided they belong to the same tribe but, if they be of a different class, they are entitled to food and raiment only."

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ly there is no contradiction, for those sub-divisions are also included in the enumeration of twelve' It appears, however, from a comparison of texts specifying the various descriptions of sons, that the exact number (as indeed is acknowledged by numerous commentators and compilers) is thirteen, including the son by a Sudra woman. Vide § 30.

23. If there be a son and an appointed daughter.] So this passage is interpreted by the commentators Visvesvara and Balam-bhatta. The original is, however, ambiguous and might be explained 'if there be a legitimate son and a son of an appointed daughter.' Balam-bhatta remarks, that this can only happen where a legitimate son is born after the appointment of a daughter.

24. So the allotment of a quarter share.] As the appointed daughter participates where there is a legitimate son; so do other sons likewise partake. Subodhini.

The mention of a son given.] This is according to the reading of the text as here cited and in the Viramitrodaya and Kamalakara's Vivada-Tandava. But, in the Kalpataru, Ratnakara, Chintamani, &c., that restrictive term is wanting: Sa chaturthabhaga-bhagi syat, instead of Chaturtha-bhaga-bhagi syad dattakah.

25. Sharers of a fourth part.] This reading is followed in the Madana-Parijata, Viramitrodaya, &c. But the Kalpataru, Ratnakara and other compilations read 'a third part.' Vide Jimuta-vahana. C. 10. § 13.

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* Yajnavalkya, 2. 132. † Manu, 9. 173. ‡ Manu, 9. 173.

26. The son of the wife, and sons given, bought, made, self-given and discarded, are of equal class; the damsel's son, the son of hidden origin, son of a pregnant bride, and son of a twice-married woman, are of inferior rank.

26. "Those who belong to the same tribe," as the son of the wife, the son given and the rest [namely the sons bought, made, self-given and discarded,*] share a fourth part, if there be a true legitimate son : but those, who belong to a different class, as the damsel's son, the son of concealed origin, the son of a pregnant bride, and the son by a twice married woman, do not take a fourth part, if there be a legitimate son ; but they are entitled to food and raiment only.

27 A passage of Vishnu, concerning these exceptionable sons, denies their participation.

27. "Exceptionable sons, as the son of an unmarried damsel, a son of concealed origin, one received with a bride, and a son by a twice-married woman, share neither the funeral oblation, nor the estate" This passage of Vishnu† merely denies the right of those sons to a quarter share, if there be legitimate issue : but, if there be no legitimate son or other preferable claimant, even the child of an unmarried woman and the rest of the adoptive sons may succeed to the whole paternal estate, under the text before cited (§ 21.)

28. Manu allots to adopted sons, a mere maintenance · supposing their insubordination towards the legitimate son.

28. "The legitimate son is the sole heir of his father's estate , but, for the sake of innocence, he should give a maintenance to the rest (*a*)"‡ This text of Manu must be considered as applicable to a case, where the adopted sons (namely the son given and the rest) are disobedient to the legitimate son and devoid of good qualities.

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28. Applicable to a case where adopted son (namely the son given, &c.) are disobedient] It also relates to the damsel's son and the rest : for they are declared entitled to food and raiment only, if there be legitimate issue ; and that must be supposed to be founded on the same authority with this text ; but Manu has himself propounded a fifth or a sixth part for the son of the wife, if there be legitimate issue.|| Viramitrodaya.

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* Balam-bhatta. † Subodhini and Parijata.

‡ It is not found in the institutes of Vishnu ; but is cited from that author in the Madana-parijata and Viramitrodaya, as in this place.

(*a*) For the sake of innocence is not correct. If should be "in order to avoid harshness."—Ed.

29. Here a special rule [different from Katyayana's]* is propounded by the same author (Manu) respecting the son of the wife: "Let the legitimate son, when dividing the paternal heritage give a sixth part, or a fifth, of the patrimony to the son of the wife."† The cases must be thus discriminated: if disobedience and want of good qualities be united, then a sixth part should be allotted. But, if one only of those defects exist, a fifth part.

29. He assigns a fifth or a sixth part to the son of the wife: according to his relative merits.

30. Manu, having premised two sets of six sons declares the first six to be heirs and kinsmen; and the last to be not heirs but kinsmen "The true legitimate issue, the son of a wife, a son given, and one made by adopted, a son of concealed origin, and one rejected [by his parents,] are the six heirs and kinsmen The son of an unmarried woman, the son of a pregnant bride, a son bought, a son by a twice-married woman, a son self-given, and a son by a Sudra woman, are six not heirs but kinsmen."‡

30. Two classes of sons are distinguished by Manu: one inheriting from collaterals, and the other not

31. That must be expounded as signifying, that the first six may take the heritage of their father's collateral kinsmen (sapindas and samanodakas) if there be no nearer heir, but not so the last six However, consanguinity and the performance of the duty of offering libations of water and so forth, on account of relationship near or remote, belong to both alike.

31. Explanation of the text.

32. It must be so expounded; for the mention of a given son in the following passage is intended for any adopted or succedaneous son "A given son must never claim the family and

32. Confirmed by a passage of Manu.

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31. The first six may take the heritage of collateral kinsmen: . ... not so the last six.] The sense of the two passages is, that, if there be no nearer collateral kinsmen, the first six inherit the property, but not the six last. Subodhini.

However, consanguinity, &c] Medhatithi interprets the text of Manu as signifying that 'the last six are neither heirs nor kinsmen' But that interpretation is censured by Kulluka-bhatta; and is supposed by the commentator on the Mitakshara to be here purposely confuted.

32. The mention of a given son is intended for any adopted son.] The meaning, as here expressed, is this the mention of a son given is in this place intended to denote any succedaneous son. Consequently, since it appears from the text, that adopted sons have a right of inheritance but, according to the opponent's opinion, it appears from another passage

* Manu, 9. 163. † Vide § 29 ‡ Manu 9. 159–160.

estate of his natural father. The funeral oblation follows the family and estate : but of him, who has given away his son, the obsequies fail "*

33. Sons of all descriptions may inherit from the father.

33. All, without exception, have a right of inheriting their father's estate, for want of a preferable son : since a subsequent passage (" Not brothers, nor parents, but sons, are heirs to the estate of the father,"† purposely affirms the succession of all subsidiary sons other than the true legitimate issue ; and the right of the legitimate son is propounded by a separate text (" The legitimate son is the sole heir of his father's estate ,"‡) and the word " heir" (dayada) is frequently used to signify any successor other than a son.

34 Differences in the order of enumeration reconciled as found in Vasishtha &c.

34. The variation which occurs in the institutes of Vasishtha and the rest, respecting some one in both sets, must be understood as founded on the difference of good and bad qualities.

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that they have not a right of succession , it might be concluded from such a contradiction, that the precepts have no authority · therefore, lest the text become futile, the interpretation, proposed by us, is to be preferred. Subodhini.

Of him, who has given away his son, the obsequies fail] This must be understood of the case where the giver has other male issue Subodhini.

But, if he have not, then even that son is competent to inherit his estate and to perform his obsequies , like the son of two fathers (Sect. 10 § 1) for a passage of Satatapa directs " Let the given son present oblations to his adoptive parent and to his natural father. on the anniversary of decease, and at Gaya, and on other occasions , not, however, if there be other male issue." This indeed can only occur where the natural father is bereft of issue after giving away his son since, at the time of the gift, it is forbidden to part with an only son (§ 11.) In this manner is to be understood the circumstance of a given son. as son of two fathers, conferring benefits on both. Balam-bhatta

33. The word " heir" is frequently used.] An instance is cited in the text. It is part of a passage, of which the sequel has not been found. The words are " let him compel the heirs to pay."

If either the natural parent or the adoptive father have no other male issue, the dvyamushyayana or son of two fathers shall present the funeral oblation to him and shall take his estate but not so, if there be male issue. If both have legitimate sons, he offers an oblation to neither, but takes the quarter of a share allotted to a legitimate son of his adoptive father. Vyavahara-mayukha.

34. The variation, which occurs in Vasishtha, &c.] Manu, declaring the appointed daughter equal to the legitimate son, includes her under legitimate issue,§ and proceeds to define the remaining ten succedaneous sons || But Vasishtha states the appointed daughter as third in rank ¶ which is a disagreement in the order of enumeration. The same must be

* Manu, 9 142. † Manu, 9. 185. ‡ Vide § 28.

§ Manu, 9. 165. || Manu, 9 166—178. ¶ Vasishtha. 17. 14.

35. And in Gautama

35. But the assignment of the tenth place to the son of an appointed daughter, in Gautama's text, is relative to one differing in tribe.

36. A nephew should be adopted rather than a stranger or a distant relation.

36. The following passage of Manu, "If among several brothers of the whole blood, one have a son born, Manu pronounces them all fathers of male issue by means of that son;"* is intended to forbid the adoption of others if a brother's son can possibly be adopted It is not intended to declare him son of his uncle: for that is inconsistent with the subseqnent text; "brothers likewise and their sons, gentiles, cognates, &c"†

37. The foregoing rules of filiations are restricted to persons of the same tribe

37. The author next adds a restrictive clause by way of conclusion to what had been stated:

"This law is propounded by me in regard to sons equal by class"‡

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understood of other institutes of law,§ which are here omitted for fear of prolixity How then is the succession of the next in order on failure of the preceding reconcilable? The author proposes this difficulty with its solution. His notion of the mode of reconciling it is this Manu, declaring that the first set of six sons by birth or adoption is competent to inherit from collateral kinsmen on failure of nearer heirs but not so the second set, afterwards proceeds to deliver incidentally definitions of those various sons. It appears therefore to be a loose enumeration, and not one arranged with precision. Accordingly Manu, in saying "Let the inferior in order take the heritage,"|| does not limit this very order, but intends one different, in some respects and the difference is relative to good and bad qualities The same method must be used with the variations in other codes Moreover, what is ordained by Yajnavalkya is consistent with propriety For the true legitimate son and the son of an appointed daughter are both legitimate issue and consequently equal. The son of the wife, a son of hidden origin, the son of an unmarried damsel, and a son by a twice-married woman, being produced from the seed of the adoptive father or from a soil appertaining to him, have the preference before the son given and the rest. The son received with a bride, being produced from soil which the adoptive father accepts for his own, is placed in the second set by the authority of the text [or because the mother did not appertain to the adoptive father at the time when the child was begotten.¶] The whole is therefore unexceptionable. Subodhini.

36. That is inconsistent with the subsequent text] It is incompatible with a passage of Yajnavalkya declaratory of the nephew's right of succession after brothers For, if he be deemed a son, because all the brethren are pronounced fathers of male issue by means of the son of a brother, he ought to inherit before all other heirs, such as the father and the rest [who are in that passage preferred to him.] Subodhini.

* Manu, 9. 182 † Yajnavalkya, 2 136, Vide infra. C. 2. Sect. 1 § 1.
‡ Yajnavalkya, 2 134. § As Vishnu 15 2—37. Narada, 13, 44—45. Devala, &c. || Manu, 9, 165. ¶ Manu, 9. 184.

38. Not being applicable when the rank differs.

38 The maxim is applicable to sons alike by class, not to such as differ in rank.

39 Some adoptive sons are however included though not within the definition of tribe

39. Here the damsel's son, the son of hidden origin, the son received with a bride, and a son by a twice-married woman, are deemed of like class, through their natural father, but not in their own characters : for they are not within the definition of tribe and class.

40 Legitimate issue, of a mixed class, inherits before adoptive son.

40 Since issue, procreated in the direct order of the tribes, as the Murdhavasikta and the rest, are comprehended under legitimate issue, it must be understood, that, on failure of these also, the right of inheritance devolves on the son of the wife and the rest.

41. But the Sudra's son is restricted to a tenth, by a passage of Manu

41. But the son by a Sudra wife, though legitimate, does not take the whole estate, even on failure of other issue Thus Manu says, "But, whether the man have sons, or have no sons, [by his wives of other classes,] no more than a tenth part must be given to the son of the Sudra."*

42 Interpretation of the text

42. "Whether he have son," whether he have male issue of a regenerate tribe ; "or have no sons," or have no issue of such a tribe ; in either case, upon his demise, the son of the wife or other

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The principle of giving a preference to the nephew, as the nearest kinsman, in the selection of a person to be adopted, is carried much further by Nanda Pandita in the Dattaka-mimansa and, according to the doctrine there laid down, the choice should fall on the next nearest relation, if there be no brother's son ; and on a distant relation, in default of near kindred ; but on a stranger, only upon failure of all kin See § 13

39. They are not within the definition of tribe.] For Yajnavalkya, having described the origin and distinctions of the tribes and classes viz [the Murdhavasikta Ambashtha, Nishada, Mahishya, Ugra and Karana :] adds "This rule concerns the children of women lawfully married.† Viramitrodaya.

Since these, (viz. the damsel's son and the rest) are bastards ; born either in fornication or adultery, their exclusion from class, tribe, &c. has been ordained in the first book on religious observances. Subodhini

41 No more than a tenth part] Is not this wrong ? for it has been declared, that the Sudra's son shall take a share in a distribution among sons of various tribes (Sect. 8 § 1) ; but it is here directed, that he shall have a tenth part. No · for the four shares of the Brahmani's son, with

*Manu, 9. 154.

† Yajnavalkya, 4. 93.

[adoptive son,] or any other kinsman [and heir,] shall give to the Sudra's son, no more than a tenth part of the father's estate.

43. The son of the Kshatriya or Vaisya wife inherits in default of issue by a Brahmani.

43. Hence it appears, that the son of a Kshatriya or Vaisya wife takes the whole of the property on failure of issue by women of equal class.

SECTION XII.

Rights of a son by a female slave, in the case of a Sudra's estate.

1. The author next delivers a special rule concerning the partition of a Sudra's goods.

1. In the instance of a Sudra's property, his son by a female slave inherits or participates, conformably to a passage of Yajnavalkya.

"Even a son begotten by a Sudra on a female slave, may take a share by the father's choice. But, if the father be dead, the brethren should make him partaker of the moiety of a share: and one, who has no brothers, may inherit the whole property, in default of daughter's sons."*

2. Interpretation of the text.

2. The son, begotten by a Sudra on a female slave, obtains a share by the father's choice, or at his pleasure But, after [the demise of†] the father, if there be son of a wedded wife, let these brothers allow the son of the female slave to participate for half a share: that is, let them give him half [as much as is the amount of one brother's‡] allotment. However, should there be no sons of a wedded wife, the son of the female slave takes the whole estate, provided there be no daughters of a wife, nor sons of daughters. But, if there be such, the son of the female slave participates for half a share only.

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three for the Kshatriya's child, make seven; and, with two for the Vaisya's offspring, make nine · adding that to one for the Sudra's son, the sum is ten. Thus there is no contradiction; for, in that instance also, his participation for a tenth part is ordained and the whole is unexceptionable. Subodhini.

43. Hence it appears,] It so appears from the text of Manu above cited (§ 41) Balam-bhatta

1 "In default of daughter's sons."] Some interpret this 'on failure of daughters, and in default of their sons.' Bálam-bhatta.

* Yajnavalkya, 2. 134—135. † Balam-bhatta.
‡ Subodhini and Balam-bhatta.

3. From the mention of a Sudra in this place, [it follows, that] the son begotten by a man of a regenerate tribe on a female slave, does not obtain a share even by the father's choice, nor the whole estate after his demise. But, if he be docile, he receives a simple maintenance.

3 But the son of a regenerate man by a female slave has a maintenance only.

CHAPTER II.

SECTION I.

Right of the widow to inherit the estate of one, who leaves no male issue.

1. That sons, principal and secondary, take the heritage, has been shown. The order of succession among all [tribes and classes*] on failure of them, is next declared.

1. The subject of collateral succession is next considered

2. "The wife, and the daughters also, both parents, brothers likewise, and their sons, gentiles, cognates, a pupil, and a fellow student: on failure of the first among these, the next in order is indeed heir to the estate of one, who departed for heaven leaving no male issue. This rule extends to all [persons and†] classes "‡

2. Passage of Yajnavalkya on that subject.

3. He, who has no son of any among the twelve descriptions abovestated (C 1. Sect. 11.) is one having 'no male issue.' Of a man, thus leaving no male progeny, and going to heaven, or departing for another world, the heir, or successor, is that person, among such as have been here enumerated, (viz the wife and the rest,) who is next in order, on failure of the first mentioned respectively. Such is the construction of the sentence.

3. Interpretation of it. The heir of a person, who leaves no male issue, is the first in succession, according to the enumeration in the text.

4. This rule, or order of succession, in the taking of an inheritance, must be understood as extending to all tribes, whether the Murdhavasikta and others in the direct series of the classes, or Suta and the rest in the inverse order; and as comprehending the several classes, the sacerdotal and the rest.

4. The rule is the same in all tribes and classes.

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2 "Brothers likewise"] This is understood by Balam-bhatta as signifying both brothers and sisters

"And their sons."] Balam-bhatta understands the daughter of brothers, as well as their sons.

3. Such is the construction of the sentence.] The commentator Balam-bhatta disapproves the reading which is here followed. The difference is, however, immaterial.

* Subodhini. † Subodhini, &c. ‡ Yajnavalkya, 2. 136 37.

5 In the first place, the wife shares the estate "Wife" (patni) signifies a woman espoused in lawful wedlock; conformably with the etymology of the term as implying a connexion with religious rites.

5. The widow is first entitled to the succession.

5 (a) The singular number is used to indicate caste Therefore if there be many (wives) of the same caste or of different castes, they take the wealth by dividing into shares (a.)

6 Vriddha-Manu also declares the widow's right to the whole estate. "The widow of a childless man, keeping unsullied her husband's bed, and persevering in religious observances, shall present his funeral oblation and obtain [his] entire share."* Vrihat-Vishnu likewise ordains it: "The wealth of him, who leaves no male issue, goes to his wife; on failure of her, it devolves on daughters, if there be none, it belongs to the father; if he be dead, it appertains to the mother."† So does Katyayana: "Let the widow succeed to her husband's wealth, provided she be chaste, and, in default of her, the daughter inherits if unmarried."‡ And again, in another place: "The widow, being a woman of honest family, or the daughters, or on failure of them, the father, or the mother, or the brother, or his sons, are pronounced to be the heirs of one who leaves no male issue."§ Also, Vrihaspati: "Let the wife of a deceased man, who left no male issue, take his share, notwithstanding kinsmen, a father, a mother, or uterine brethren, be present"

6 Passage of Manu,

Vishnu,

Katyayana,

and Vrihaspati concur in this.

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5. Conformably with the etymology.] A rule of grammar is cited in the text: viz Panini, 4 1. 35.

The author of the Subodhini remarks, that the meaning of the grammatical rule cited from Panini is this Patni 'wife' anomalously derived from Pati 'husband,' is employed when connexion with religious rites is indicated for they are accomplished by her means, and the consequence accrues to him. The purport is, that a woman, lawfully wedded, and no other, accomplishes religious ceremonies. and therefore one espoused in lawful marriage is exclusively called a wife (patni.) Although younger wives are not competent to assist at sacrifices or other religious rites, if an eldest wife exist, who is not disqualified; still, since the rest become competent in their turns, on failure of her, or even during her life, if she be afflicted with a lasting malady or be degraded for misconduct, they possess a capacity for the performance of religious ceremonies. and here such capacity only is intended. Or else marriage may be exclusively meant by religious rites for offerings are made to

* See a note on this passage in Jimuta-vahana, Ch. II. Sect. I, § 7.

† Vishnu, 17. 4—7.

‡ Vide infra Sect 2 § 2

§ In the Viramitrodaya, this is cited as the text of a different author, but the commentator on the Mitakshara treats it as a further passage from the author before cited.

(a) This portion is omitted by Colebrooke. Probably the text did not appear in his copy of the Mitakshara —Ed

7. Other texts, of a contrary import, cited from Narada,

7. Passages, adverse to the widow's claim, likewise occur. Thus Narada has stated the succession of brothers, though a wife be living; and has directed the assignment of a maintenance only to widows. "Among brothers, if any one die without issue, or enter a religious order, let the rest of the brethren divide his wealth, except the wife's separate property. Let them allow a maintenance to his women for life, provided these preserve unsullied the bed of their lord. But, if they behave otherwise, the brethren may resume that allowance."* Manu propounds the succession of the father, or of the brother, to the estate of one who has no male offspring: "Of him, who leaves no son, the father shall take the inheritance, or the brothers."† He likewise shares the mother's right to the succession, as well as the paternal grandmother's: "Of a son dying childless, the mother shall take the estate and, the mother also being dead, the father's mother shall take the heritage."‡ Sankha also declares the successive rights of brothers, and of both parents, and lastly of the eldest wife: "The wealth of a man, who departs for heaven, leaving no male issue, goes to his brothers. If there be none, his father and mother take it: or his eldest wife." Katyayana too says, "If a man die separate from his co-heirs, let his father take the property on failure of male issue; or successively the brother, or the mother, or the father's mother."

Manu, Sankha, and Katayana.

8. Dharesvara's mode of reconciling the contradiction

8. The application of these and other contradictory passages is thus explained by Dharesvara: 'The rule, deduced from the texts [of Yajnavalkya, &c. §], that the wife shall take the estate, regards the widow of a separated brother: and that, provided she be solicitous of authority for raising up issue to her husband. Whence is it inferred,

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deities at that ceremony, and such also is a sacrifice or solemn rite. Thus likewise a woman lawfully espoused, and no other, is a wife (patni.)

8. And other contradictory passages] Alluding to the texts of Gautama and Devala subsequently quoted. Balam-bhatta.

The rule deduced from the texts] From those of Yajnavalkya (§ 2.), Viddha-Manu, Vishnu, Katyayana and Vrihaspati (§ 6.) Subodhini, &c

"If she seek ....offspring"] The particle (va) is understood by the author, by whom the passage is here cited, in the conditional sense, as appears from the interpretation of the text in the next paragraph (§ 9); according to the remark of the comentators on the Mitakshara But the scholiast of Gautama takes it in its usual disjunctive sense: and the text is differently interpreted by the author of the Mitakshara himself (§ 18.)

* Narada, 13. 25—26. † Manu, 9. 185 Vide Sect. 4. § 1.
‡ Manu, 9. 217. Vide Sect. 4. § 2, and Sect. 5 § 2. § Subodhini.

'The rule for the widow's succession concerns the widow of a separated brother seeking to raise up offspring to him.

This is confirmed by Gautama.

that a widow succeeds to the estates, provided she seek permission for raising up issue, but not independently of this consideration? From the text above cited, "Of him, who leaves no son, the father shall take the inheritance;"* and other similar passages [as Narada's &c.†] For here a rule of adjustment and a reason for it must be sought; but there is none other. Besides it is confirmed by a passage of Gautama. "Let kinsmen allied by the funeral oblation, by family name, and by descent from the same patriarch, share the heritage; or the widow of a childless man, if she seek to raise up offspring to him."‡

9 Interpretation of the text

9. 'The meaning of the text is this · person, connected by a common oblation, by race, or by descent from a patriarch, share the effects of one who leaves no issue: or his widow takes the estates, provided she seek progeny.'

10. Confirmed by passages of Manu, which shew that the property goes to the son borne by the widow.

10. 'Manu likewise shows by the following passage, that, when a brother dies possessed of separate property, the wife's claim to the effects is in right of progeny, and not in any other manner. "He, who keeps the estate of his brother and maintains the widow, must, if he raise up issue to his brother, deliver the estate to the son."§ So, in the case of undivided property likewise, the same author says, "Should a younger brother have begotten a son on the wife of his elder brother, the division must then be made equally: thus is the law settled."||

11. Vasishtha also hints, that the widow's succession is in contemplation of her issue.

11. 'Vasishtha also, forbidding an appointment to raise up issue to the husband, if sought from a covetous motive ("An appointment shall not be through covetousness,"¶) thereby intimates, that the widow's succession to the estate is in right of such an appointment, and not otherwise.'

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10. "Must....deliver the estate to the son"] It is thus shown, that a separated brother is meant; else, if there had been no partition, he could not have separate property. In the text subsequently cited, it appears from the direction for making the division equally, that the case of an unseparated co-heir is intended. Since there could be no partition, if he were already separated. Subodhini.

11. The widow's succession is in right of such an appointment] A widow, who has accepted authority for raising up issue to her husband, has the right of succession to his estate; but no other widow has so. Viramitrodaya

* Manu, 9 185 Vide supra § 7. † Balam-bhatta
‡ Gautama, 28. 19—20. Vide infra. § 18. § Manu, 9. 146
|| Manu, 9. 120. ¶ Vasishtha, 17. 48.

12. Else she has a maintenance only; according to Narada.

12. 'But, if authority for that purpose have not been received, the widow is en itled to a maintenance only; by the text of Narada: "Let them allow a maintenance to his women for life."*

13 A passage of Yajnavalkya, supposed to bear the same import.

13. 'The same (it is pretended) will be subsequently declared by the contemplative saint: "And their childless wives, conducting themselves aright, must be supported; but such, as are unchaste, should be expelled; and so, indeed should those, who are perverse."†

14. Women are inapt to inherit wealth, since it is designed for religious uses.

14. "Moreover, since the wealth of a regenerate man, is designed for religious uses, the succession of women to such property is unfit; because they are not competent to the performance of religious rites. Accordingly, it has been declared by some author, "Wealth was produced for the sake of solemn sacrifices: and they, who are incompetent to the celebration of those rites, do not participate in the property, but are all entitled to food and raiment." "Riches were ordained for sacrifices. Therefore they should be alloted to persons who are concerned with religious duties; and not be assigned to women, to fools, and to people neglectful of holy obligations."

15. Dharesvara's argument (§ 8—14) refuted.

15. That is wrong: for authority to raise up issue to the husband is neither specified in the text. ("The wife and the daughters also, &c.")‡ nor is it suggested by the premises. Besides it may be here asked; is the appointment to raise up issue a reason for the widow's succession to the property? or is the issue, borne by her, the cause of her succession? If the appointment alone be the reason, it follows, that she has a right to the estate, without having borne a son; and the right of

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13. The same (it is pretended) will be declared.] Here the particle kila indicates disapprobation; as in the example 'Ah! wilt thou [presume to] fight.' For this passage of Yajnavalkya will be expounded in a different sense. So the expression 'by some author' (§ 14) is intended as an indication of disrespect. Hence the insertion of the passage so cited, in this argument, does not imply an acknowledgment of it as original and genuine. Subodhini

14. It has been declared by some author] The passage here cited is not considered as authentic; and no authority is shown for that and the following text Balam-bhatta.

15. And the right of the son subsequently produced does not ensue.] Which is inconsistent with the enunciation of his right of succession, as one of the twelve descriptions of sons, preferably to the widow and other heirs. Subodhini and Balam-bhatta.

* Narada, 13. 26. Vide, supra, § 7. † Yajnavalky, 2. 143. ‡ § 2.

the son subsequently produced [by means of the appointment*] does not ensue. But, *if the offspring be the sole cause [of her claim, †] the wife should not be recited as a successor: since, in that case, the son alone has a right to the goods.*

16 But, it is said, women have a title to property, either through the husband, or through the son, and not otherwise That is wrong: for it is inconsistent with the following text and other similar passages. "What was given before the nuptial fire, what was presented in the bridal procession, what has been given in token of affection, what has been received by the woman from her brother, her mother, or her father, are denominated the sixfold property of a woman "‡

16 His objections obviated

17 Besides, the widow and the daughters are announced as successors (§ 2), on failure of sons of all descriptions Now by here affirming the right of a widow, who has been appointed to raise up issue, the right of her son to succeed to the estate is virtually affirmed But that had been already declared: and therefore the wife ought not to be mentioned under the head [of succession to the estate§] of one who leaves no male issue

17 An inconsistency in his interpretation shown.

18. But, it is alleged, the right of a widow, who is authorized to raise up issue to her husband, is deduced from the text of Gautama "Let kinsmen allied by the funeral oblation, by family name, and by descent from the same patriarch, share the heritage, or the widow of a childless man and she may either

18. His explanation of Gautama's text (§ 8) proved to be erroneous
The right interpretation of it stated

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16 That is wrong for it is inconsistent with the following text] Admitting the restriction, that women obtain property through their husbands or sons only still that restriction does not hold good universally since women's right of property is declared in other instances. Subodhini.

17 The wife ought not to be mentioned.] She ought not to be here mentioned lest it should be thought a vain repetition Subodhini.

18 She may either seek to obtain progeny] The author proposes two modes of conduct for a woman whose husband is deceased. One is, that she should seek offspring, or endeavour to obtain male issue under an authority for that purpose The term va (either, or,) in this place does not signify 'if;' but indicates an alternative and that implies an opposite case, and the opposite case is the second mode of conduct, which, though not expressly stated in the text, must, by force of the particle va in its usual disjunctive acceptation, be opposite to the desire of obtaining progeny by means of an appointment to raise up issue . and this is

* Balam-bhatta. † Balam-bhatta ‡ Manu, 9. 194.

§ Balam-bhatta.

A chaste widow's succession is expressly affirmed and an appointment to raise up issue is condemned.

[remain chaste, or may] seek offspring."* This too is erroneous : for the sense, which is there expressed, is not 'if she seek to obtain offspring, she may take the goods of one who left no issue ;' but 'persons allied by the funeral oblation, by family name, and by descent from the same patriarch, share the effects of one who leaves no issue ; or his widow takes his estate : and she may either seek to obtain progeny, or may remain chaste' This is an instruction to her, in regard to her duty. For the particle (va) 'or,' denoting an alternative, does not convey the sense of 'if.' Besides it is fit, that a chaste woman should succeed to the estate, rather than one appointed to raise up issue, reprobated as this practice is in the law as well as in popular opinion. The succession of a chaste widow is expressly declared . "The widow of a childless man, keeping unsullied her husband's bed, and persevering in religious observances, shall present his funeral oblation and obtain his entire share."† And an authority to raise up issue is as expressly condemned by Manu "By regenerate men no widow must be authorized to conceive by any other ; for they, who authorize her to conceive by another, violate the primeval law "‡

19 Proper interpretation of the text of Vasishtha (§ 11)

19. But the text of Vasishtha "An appointment shall not be through covetousness ;"§ must be thus interpreted . 'if the husband die either unseparated from his co-parceners or reunited with them, she has not a right to the succession ; and therefore an appointment to raise up issue must not be accepted for the sake of securing the succession to her offspring'

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consequently determined to be the duty of chastity. The meaning therefore is this two modes of conduct are here prescribed : either she must seek male issue by means of an appointment for that purpose. or she must remain chaste. Subodhini

19. Therefore an appointment . must not be accepted.) Considering, that she has not herself a right to the estate, she ought not to seek an authority for raising up issue, from covetousness, with the view that the wealth may go to her progemy, as it cannot belong to herself. Subodhini.

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* Vide § 8, The text is here translated according to the commentator's interpretation

† Vide § 6.

‡ Manu, 9. 64. vide C. 1. Sect 10. § 8.

§ Vide § 11.

20. And of the passage of Narada (§ 12)

20. As for the text of Narada, "Let them allow a maintenance to his women for life;"* Since re-union of parceners had been premised (in a former text, viz. "The shares of re-united brethren are considered to be exclusively theirs;"†) it must be meant to assign only a maintenance to their childless widows Nor is tautology to be objected th that passage, the intermediate text being relative to reunited parceners ("Among brothers, if any one die without issue, &c."‡) For women's separate property is exempted from partition by this explanation of what had been before said, and a mere maintenance for the widow is at the same time ordained.

21. The text of Yajnavalkya (§ 13) also will be explained in a different sense.

21. The passage, which has been cited, "Their childless wives, conducting themselves aright, must be supported;"§ will be subsequently shown to intend the wife of an impotent man and so forth ||

22 Dharesvara's argument of women's inaptness to inherit (§ 14), refuted It is shown to be inconsistent with passages of Yajnavalkya, Gautama, and Manu.

22 As for the argument, that the wealth of a regenerate man is designed for religious uses; and that a woman's succession to such property is unfit, because she is not competent to the performance of religious rites; that is wrong: for, if every thing, which is wealth, be intended for sacrificial purposes, then charitable donations, burnt offerings, and similar matters, must remain unaccomplished. Or, if it be alleged, that the applicableness of wealth to those uses is uncontradicted, since sacrifice here signifies

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20. Nor is tautology to be objected] On the ground, that both passages convey the same import. For, in explaining what had been before said, the two several passages convey two distinct meanings namely, that the women's separate property is not to be divided. and that a maintenance only is to be granted to them What had been before said, is not all which is afterwards declared, that it should be charged with tautology. The text "Among brothers, if any one die without issue," is an explanation of the preceding one ("The shares of reunited brethern are considered to be exclusively theirs." The close of it, 'except the wife's separate property," is a declaration of her property being indivisible; and the subsequent passage ("Let them allow a maintenance to his women for life") contains a separate injunction Balam-bhatta.

22. Sacrifice here signifies religious duty in general] The relinquishment of a thing, with the view to its appertaining to a deity, is a sacrifice (yaga) or consecration of the thing The same design, terminated by casting the thing into the flames, is a burnt offering (homa) or holocaust.

* Narada, 13. 26 Vide § 12. † Narada, 13 24.

‡ Narada, 13. 25 See Jimuta-vahana, Ch 11 Sect. 1. § 48.

§ Vide supra. § 13. || Vide Sect 10. § 15.

religious duty in general; and charitable donations, burnt offerings and the rest are acts of religious duty: s ill other purposes of opulence and gratifica'ion, which are to be effected by means of wealth, must remain unaccomplished; and, if that be the case, there is an inconsistency in the following passages of Yajnavalkya, Gautama and Manu. "Neglect not religious duty, wealth or pleasure, in their proper season."* "To the utmost of his power, a man should not let morning, noon or evening be fruitless, in respect of virtue, wealth and pleasure."† "The organs cannot so effectually be restrained by avoiding their gratification, as by constant knowledge [of the ills incident to sensual pleasure"‡]

23 And is incompatible with the reasoning of the Mimamsa

23 Besides, if wealth be designed for sacrificial uses, the argument would be reversed, by which it is shown, that the careful preservation of gold [inculcated by a passage of the Veda§] "Let gold be preserved," is intended not for religious ends, but for human purposes

24 Women might inherit, though wealth were designed for religious uses.

24 Moreover, if the word sacrifice import religious duty in general, the succession of women to estates is most proper, since they are competent to the performance of auspicious and conservatory acts [as the making of a pool or a garden, &c ||]

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The conferring of property on another by annulling a previous right, is a gift (dana) or donation. Such is the difference between sacrifice, burnt-offering and donation. Subodhini.

"In their proper season"] This part of the text was wanting in the quotation of it, as here exhibited but the passage, as it is read in its proper place, by the Mitakshara, Apararka and the Dipakalika, contains the words swake kale 'in their proper season'

23 The agument would be reversed The reasoning here alluded to occurs in the Mimansa, and is the 12th topic of the 4th section of the 3rd chapter The passage of the Veda, which is there examined, and the initial words of which are quoted in the text, enjoins the careful preservation of gold, lest it lose its brightness and be tarnished. The question, raised on it, is whether the observance of the precept be essential to the efficacy of sacrifice or serve only a human pupose; and the result of the reasoning is, that the precept affects the person, and not the sacrifice. This reasoning is considered by the author to be incompatible with the notion, that wealth is intended solely for sacrificial uses.

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* Yajnavalkya, 1. 115. † Not found in Gautama's institutes.

‡ Manu, 2 96 partially quoted in this place. § Balam-bhatta.

|| Balam-bhatta.

25. Though held in thraldom, they are capable of property.

25. The text of Narada, which declares the dependence of women, ("A woman has no right to independence,")* is not incompatible with their acceptance of property; even admitting their thraldom.

26. Right interpretation of passages before cited (§ 14)

26. How then are the passages before cited ("Wealth was produced for the sake of solemn sacrifices, &c."†) to be understood? The answer is, wealth, which was obtained [in charity‡] for the express purpose of defraying sacrifices, must be appropriated exclusively to that use even by sons and other successors. The text intends that. for the following passage declares it to be an offence [to act otherwise,] without any distinction in respect of sons and successors. "He, who, having received articles for a sacrifice, disposes not of them for that purpose, shall become a kite or a crow" §

27 A passage of Katyayana assigns a subsistence to females, when an estate escheats to the king for want of heirs.

Interpretation of the text

27 It is said by Katyayana "Heirless property goes to the king, deducting however a subsistence for the females as well as the funeral charges: but the goods belonging to a venerable priest, let him bestow on venerable priests" "Heirless property," or wealth which is without an heir to succeed to it, "goes to the king," becomes the property of the sovereign; "deducting however a subsistence for the females as well as the funeral charges" that is, excluding or setting apart a sufficiency for the food and raiment of the women, and as much as may be requisite for the funeral repasts and other obsequies in honour of the late owner, the residue goes to the king. Such is the construction of the text An exception is added: "but the goods belonging to a venerable priest," deducting however a subsistence for the females as well as the charges of obsequies, 'let him now bestow on a venerable priest.

28. It relates to concubines; and so does a similar text of Narada.

28. This relates to women kept in concubinage: for the term employed is "females" (yoshid.) The text of Narada likewise relates to concubines; since the word there used is "woman" (stri.) "Except the wealth of a Brahmana [property

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27. "Let him bestow on venerable priests"...... 'let him bestow on a venerable priest'] The commentator, Balam-bhatta, considers as a variation in the reading of the text, the subsequent interpretation of it, 'let him bestow on a venerable priest' Srotriyayopapadayet in place of Srotriyebhyas tad arpayet He remarks, however, that the singular number is used generically.

28. The text.... relates to concubines] Or to twice-married women and others not considered as wives espoused in lawful wedlock. Balam-bhatta.

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* Narada, 13, 31. † Vide § 14 ‡ Balam-bhatta.

§ This is a passage of Manu according to Balam-bhatta; and a text of the same import, but expressed in other words, occurs in his institutes, 11. 25.

goes to the king on failure of heir.] But a king, who is attentive to the obligations of duty, should give a maintenance to the women of such persons. The law of inheritance has been thus declared."*

29. But here (§ 3) the wife's right of succession is declared

29. But since the term "wife" (patni) is here employed, (§ 2.) the succession of a wedded wife, who is chaste, is not inconsistent with those passages.

30 If her husband was separated from his co-heirs and not re-united.

30. Therefore the right interpretation is this: when a man, who was separated from his co-heirs and not re-united with them, dies leaving no male issue, his widow [if chaste†] takes the estate in the first instance. For partition had been premised; and re-union will be subsequently considered

31 Srikara's opinion refuted He supposes the widow's succession to be restricted to the case of a small property But she takes a share, though there be sons.

31. It must be understood, that the explanation, proposed, by Srikara and others, restricting [the widow's succession] to the case of a small property, is refuted by this [following argument.‡] If there be legitimate sons, it is provided, whether partition be made in the owner's life-time or after his decease, that the wife shall take a share equal to the son's. "If he make the allotments equal, his wives must be rendered partakers of like portions."§ And again. "Of heirs dividing after the death of the father, let the mother also take an equal share."|| Such being the case, it is a mere error to say, that the wife takes nothing but a subsistence from the wealth of her husband's who died leaving no male issue.

32. She does not take merely enough for her subsistence.

32. But it is argued, that, under the terms of the texts above cited, ("his wives must be rendered partakers of like portions," and, "let the mother also take an equal share;") a woman takes wealth sufficient only for her maintenance.

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31. It is a mere error to say, that the wife takes nothing but a subsistence.] If the wife share a portion equal to that of a son, not an allotment sufficient only for her support, both when the husband is living, and after his decease, though sons exist; more especially should it be affirmed, that she obtains the whole wealth of her husband, who leave no male issue. and thus, since the widow's succession to the whole estate is established by reasoning a fortiori, the assertion, that she obtains no more than food and raiment, is erroneous Besides, since the wife's participation with a son, who is entitled to take a share of the estate, or if there be no other son, the whole of it, has been expressly ordained it is fit that she should, on failure of male issue, take the wealth of her childless husband being separate from his co-heirs. Subodhini.

32 For the words "share" and "equal" might consequently be deemed unmeaning.] These terms are commonly employed to signify

* Narada, 13, 51—52. † Balam-bhatta. ‡ Ibid.
§ C. 1. Sect. 2 § 8. || C. 1. Sect 7. § 1.

That is wrong: for the words "share" or "portion," and "equal" or "like," might consequently be deemed unmeaning.

33. Or suppose, that, if the wealth be great, she takes precisely enough for her subsistence; but, if small, she receives a share equal to that of a son This again is wrong: for variableness in the precept must be the consequence Thus, if the estate be considerable, the texts above cited, ("his wives must be rendered partakers of like portion;" and "let the mother also take an equal share;") assisted by another passage ["Let them allow a maintenance to his women for life;" § 12.*] suggest an allotment adapted for bare support But, if the estate be considerable, the same passages indicate the assignment of a share equal to a son's

33. Nor a subsistence if the estate be large, and a share if it be small.

34. Thus, in the instance of the Chaturmasya sacrifices, in the disquisition of the [Mimamsa] on the passage dvayoh pranayanti;† where it is maintained by the opponent, that the rules for the preparation of the sacrificial fire at the Soma-yaga extend to these sacrifices; in consequence of which the injunction not to construct a northern altar (uttaravedi) at the Vaisvedeva and Sunasiriya sacrifices, must be understood as a prohibition of such altar; [which should else be constructed at those sacrifices, as at a Soma-yaga:] but it is answered by an advocate for the right opinion, that it is not a prohibition of that altar as suggested by extending to these sacrifices the rules for preparing the the sacrificial fire at the Soma-yaga, but an exception to the express rule "prepare an uttara-vedi at this sacrifice [viz. at the Chaturmasya"] it is urged in reply by the opponent

34. Argument illustrated by reasoning quoted from the Mimamsa.

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'portion' and 'parity' By abandoning their own signification without sufficient cause, they would appear unmeaning Subodhini

33. Variableness in the precept must be the consequence] If the passage above cited (§ 31.) assisted by another passage (§ 12), ordain the widow's receipt of a sufficiency for her support, at the time of making a partition with the sons, whether her husband, who was wealthy, be then alive or dead; but ordain her taking of a share equal to that of a son, if her husband possess little property; then a single sentence, once uttered, is in one case dependent [on a different passage, for its interpretation,] and not so in another instance. Consequently, since it does not retain an uniform import, there is variableness in the precept Subodhini.

34. In the instance of the Chaturmasya sacrifices] These are four sacrifices performed on successive days, according to some authorities, but in the months of Ashadha, Kartika and Phalguna, according to others. They are severally denominated Vaisvedeva, Varuna-pragasa, Sakamedha and Sunasiriya. The oblations consist of roasted cakes (purodasa); and, at the second of them, two figures of sheep made of ground rice The cakes are prepared in the usual manner, consisting of ground rice, kneaded with hot water, and formed into lumps of the shape

* Subodhini and Balam-bhatta. † Mimansa, 7. 3. 9.

that variableness in the precept must follow, since the same precept thus authorized the occasional construction of the altar, with the reference to a prohibition of it, at the first and last of the [four] periods of sacrifice, and commands the construction of it at the two middle periods, independently of any other maxim: but it is finally shown as the right doctrine, for the very purpose of obviating the objection of variableness in the precept, that the prohibition of the altar at the first and last of the periods of sacrifice is a recital of a constant rule; and that the injunction, "prepare the uttara-vedi at this sacrifice," commands its construction at the two middle periods (namely the Varuna-praghasa and Sakamedha) with a due regard to that explanatory recital.

35. Another exposition of the texts of Manu, Sankha and Narada proposed

35. As for the doctrine, that, from the text of Manu ("Of him, who leaves no son, the father shall take the inheritance, or the brothers,"*) as well as from that of Sankha. ("The wealth of a man, who departs for heaven, leaving no male issue, goes to his brothers. If there be none, his father and mother take it: or his eldest wife."†) The succession of brothers, to the estate of one who leaves no male issue, is deduced; and that a wife obtains a sufficiency for her support, under the text "Let them allow a maintenance to his women for life:"‡ this being determined, if a rich man die, leaving no male issue, the wife takes as much as is adequate to her subsistence, and the brethren take the rest, but, if the estate be barely enough for the support of the widow, or less than

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of a tortoise these are roasted on a specified number of potsherds (kapala) placed in a circular hole, which contains one of the three consecrated fires perpetually maintained by devout Brahmanas

In the disquisition on the passage dvayoh pranayanti.] Part of a passage of the Veda, which is the subject of a disquisition in the Mimamsa, and which gives name to it This is the ninth (or, according to one mode of counting, the seventh) topic in the third section of Jaimini's seventh chapter. See Jimuta-vahana Ch. II. Sect 5.

Since the same precept authorizes the occasional construction of the altar] Since one precept commands it at a Chaturmasya sacrifice and another forbids it at two of the periods of that sacrifice, the injunction, contrasted with the prohibition, seems to imply an option in this case. but, not being contrasted with any other rule, it becomes a cogent precept in the instance of the two other periods · and thus the rule, being cogent in one case and not in the other, is variable in its import and effect

35. On the controverted question whether the widow or the brothers inherit.] Whether the widow inherits, as provided by Narada; or the brothers succeed conformably with the texts of Manu and Sankha. Balam-bhatta

This opinion the reverend teacher does not tolerate.] Meaning Visvarupa. Subodhini and Balam-bhatta.

The text of Sankha relates to a reunited brother.] It relates to the case of a brother, who, after separation, becomes associated with his co-heirs, from affection or any other motive. Subodhini.

* Vide § 7. † Ibid. ‡ Narada. Vide § 7.

It is condemned by Visvarupa, who interprets otherwise the text of Manu, (§ 7,) and that of Sankha (§ 7.)

enough, this text ("*The wife and the daughters also*;"*) is propounded, on the controverted question whether the widow or the brothers inherit, to show, that the first claim prevails. This opinion the reverend teacher does not tolerate: for he interprets the text, "Of him who leaves no son, the father shall take the inheritance, or the brothers;"† as not relating to the order of succession, since it declares an alternative; but as intended merely to show the competency for inheriting, and as applicable when the preferable claimants, the widow and the rest, fail. The text of Sankha too relates to a re-united brother

36. Besides it does not appear either from this passage [of Yajnavalkya‡] or from the context, that it is relative to an inconsiderable estate. If the concluding sentence "On the failure of the first among these, the next in order is heir,§ be restricted to the case of a small property, reference to another passage, in two instances (of the widow and of the daughters,) but relates to wealth generally in the other instances (of the father and the rest,) the consequent defect of variableness in the precept (§ 33.) affects this interpretation.

36. The passage of Yajnavalkya cannot be taken as relating to a small estate in one instance, since it must relate to wealth generally in another case.

37. "If a woman, becoming a widow in her youth, be headstrong, a maintenance must in that case be given to her for the support of life"‖ This passage of Harita is intended for a denial of the right of a widow suspected of incontinency, to take the whole estate. From this very passage [of Harita¶], it appears that a widow, not suspected of misconduct, has a right to take the whole property.

37. It appears from a passage of Harita that a widow, suspected of incontinency, has a maintenance only, but otherwise inherits the whole property

38. With the same view, Sankha has said "Or his eldest wife."(§ 7.) Being eldest by good qualities, and not supposed likely to be guilty of incontinency, she takes the whole wealth; and like a mother, maintains any other headstrong wife [of her husband.] Thus all is unexceptionable.

38. This serves to explain a passage of Cankha (§ 7.)

39. Therefore it is a settled rule, that a wedded wife, being chaste, takes the whole estate of a man, who being separated from his co-heirs and not subsequently reunited with them, dies leaving no male issue.

39. Conclusion.

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* Yajnavalkya. Vide § 2. † Manu. Vide § 7. ‡ Subodhini. § Vide § 2.

‖ In the Vivada-chintamani this passage is read without the conditional particle: viz "A woman. ...is headstrong but a maintenance must ever be given to her.... ."

¶ Balam-bhatta.

SECTION II.

Right of the daughters and daughter's sons.

1. After wife a daughter inherits: whatever be her tribe.

1. On failure of her, the daughters inherit They are named in the plural number (Section 1. § 2.) to suggest the equal or unequal participation of daughters alike or dissimilar by class.

2 Passages of Katyayana and Vrihaspati declare her right of succession.

2. Thus Katyayana says, "Let the widow succeed to her husband's wealth, provided she be chaste; and, in defult of her, let the daughter inherit, if unmarried."* Also Vrihaspati: "The wife is pronounced successor to the wealth of her husband; and, in her default, the daughter. As a son, so does the daughter of a man proceed from his several limbs. How then should any other person take her father's wealth?"

3 First the unmarried daughter inherits.

3 If there be competition between a married and an unmarried daughter, the unmarried one takes the succession under the specific provisions of the text above cited ("in default of her, let the daughter inherit, if unmarried")

4 Next a married but unprovided one. And lastly an enriched one.

4. If the competition be between an unprovided and an enriched daughter, the unprovided one inherits: but, on failure of such, the enriched one succeeds: for the text of Gautama. "A woman's separate pro-perty goes to her daughters, unmarried or unprovided"† is equally applicable to the paternal, (as to the maternal, estate.)

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1. They are named in the plural number.] Here female issue is signified by the original word "daughter" duhitri) and that is applicable. indifferently, to such as belong to the same or to different tribes. Plurality is denoted by the termination of the plural number, (as in duhitaras;) which includes, without inconsistency, those who are dissimilar from the parent Therefore daughters, alike or different class, are indicated by the original word and its termination. They share equal or unequal portions in the order before mentioned . namely four shares, three, two or one (C. 1 Sect. 8 § 1.) Subodhini.

4. The text of Gautama is equally applicable to the paternal......... estate.] The meaning is this: since the daughter's right is declared with reference to a woman's peculiar property, but it is not intended by using the word "woman's" to restrict it positively to that single object, the parity of reasoning holds good. Subodhini.

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* Vide supra. Sect. 1. § 6. † Gautama, 28, 22. Vide supra. C.1. Sect 3. § 11. The text is placed here by me. Colebrooke places it at the end of the paragraph.—Ed.

5. An appointed daughter is not meant.

5. It must not be supposed, that this relates to the appointed daughter: for, in treating of male issue, she and her son have been pronounced equal to the legitimate son ("Equal to him is the son of an appointed daughter,"* or the daughter appointed to be a son †)

6. The daughter's son inherits on failure of daughters, as declared by Vishnu, and by Manu.

6 By the import of the particle "also" (Sect 1 § 2.) the daughter's son succeeds to the estate on failure of daughters. Thus Vishnu says, "If a man leave neither son, nor son's son, nor [wife, nor female‡] issue, the daughter's son shall take his wealth. For, in regard to the obsequies of ancestors, daughter's sons are considered as son's sons."§ Manu likewise declares, "By that male child, whom a daughter, whether formally appointed or not, shall produce from a husband of an equal class, the maternal grandfather becomes the grandsire of a son's son. let that son give the funeral oblation and possess the inheritance."‖

SECTION III

Right of the Parents

1. Next both parents inherit

1. On failure of those heirs, the two parents, meaning the mother and the father are successors to the property.

2. First the mother, and after her the father

2. Although the order, in which parents succeed to the estate, do not clearly appear [from the tenor of the text, Sect 1 § 2] since a conjunctive compound is declared to present the meaning of its several terms at once,¶ and the omission of one term

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5. For, in treating of male issue, she and her son have been pronounced, &c.] Since she has been noticed while treating of male issue, the introduction of her in this place would be improper Subodhini.

6. The daughter's son succeeds to the estate on failure of daughters.] According to the commentary of Balam-bhatta the daughter's daughter inherits in default of daughter's sons He grounds this opinion, for which however there is no authority in Vijnaneevara's text, upon the analogy, which this author has admitted in another case, between the succession to a woman's separate property and the inheritance of the paternal estate. (Vide § 4.)

2. Although the order ....do not clearly appear] It is declared, that the two parents are successors to the property, if there be no daughter nor daughter's son. Since the term (pitarau) 'parents' is formed by

* C. 1. Sect. 11. § 1. † C. 1. Sect. 11. § 3 ‡ Balam-bhatta.
§ Not found in Vishnu's institntes. but cited under his name in the Smriti-chandrika. ‖ Manu, 9. 136. ¶ Vartika, 1. on Panini, 2. 2. 20.

and retention of the other constitute an exception* to that [complex expression ;] yet, as the word 'mother' stands first in the phrase into which that is resolvable, and is first in the regular compound (matapitarau) 'mother and father,† when not reduced [to the simpler form pitarau 'parents'] by the omission of one term and retention of the other ; it follows from the order of the terms and that of the sense which is thence deduced, and according to the series thus presented in answer to an inquiry concerning the order of succession, that the mother takes the estate in the first instance ; and, on failure of her, the father.

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omitting one and retaining the other member of a complex expression (mother and father ;) shall they conjointly take the estate, or severally ? and is the order of succession optional, or fixed and regulated ' The author replies to these questions. Subodhini.

A conjunctive compound is declared, &c.] A compound term is formed, as directed by Panini and his commentators, ‡ when two or more nouns occur with the import of the conjunction 'and," in two of its senses (viz. reciprocation and cumulation §) This is limited by the emendatory rule of Katyayana to the case where the sense conveyed by each word is presented at once while the same terms, connected in a phrase by the conjunction copulative, would present the sense of each successively.

The omission of one term and retention of the other constitute an exception] When the word pitri 'father' occurs with matri 'mother' it may be retained and the other be rejected. This is an exception to the general rule of composition It is optional , and the regular form may be retained in its stead Ex Pitarau 'two parents ,' or Matapitarau 'mother and father.' Panini, 1. 2 70. and 2. 2. 29.—34.

The word mother stands first in the phrase into which that is resolvable.] The compound term, whether reduced to the simpler expression or retaining its complex form, is resolvable into the phrase mata cha pita cha 'both the mother and the father ' This, however, is only the customary order of terms, not specially enjoined by any rule of syntax.

Is first in the regular compound.] Conformably with one of Katyayana's emendatory rules on Panini's canon for the collocation of terms in composition. (2. 2. 34). That rule requires the most revered object to have precedence: and the example of the rule, as given in Patanjali's Mahabhashya and Vamana's Kasika-vritti, is this very compound term matapitarau 'mother and father. The commentators, Kaiyata and Haradatta, assign reasons why a mother is considered to be more venerable than a father.

It follows, from the order of the terms.] The compound term matapitarau 'mother and father,' as well as the abridged and simpler expression pitarau 'parents,' is resolvable into the same phrase mata cha pita cha 'both the mother and the father.' Thus, in every form of expression, 'mother' stands first. Hence the author infers, that the mother's priority in regard to succession to wealth is intended by the text (Sect. 1. § 2.)

* Panini, 1. 2. 70. † Vartika, 3, on Panini, 2. 2. 34.
‡ Vide infra. Sect. 11. § 20.
§ See Dictionary of Amara, Book 3 Chap. 4 Sect. 28. Verse 2.

3. The mother is nearest to her son; and should therefore inherit, conformally with a passage of Manu.

3. Besides the father is a common parent to other sons, but the mother is not so. and, since her propinquity is consequently greatest, it is fit, that she should take the estate in the first instance, conformably with the text "To the nearest sapinda, the inheritance next belongs."*

4. That text, though it speak of Sapindas, is not restricted to them.

4. Nor is the claim in virtue of propinquity restricted to (sapindas) kinsmen allied by funeral oblations: but, on the contrary, it appears from this very text, (§ 3.) that the rule of propinquity is effectual, without any exception, in the case of (samanodakas) kindered connected by libations of water, as well as other relatives, when they appear to have a claim to the succession.

5 Conclusion.

5. Therefore, since the mother is the nearest of the two parents, it is most fit, that she should take the estate. But, on failure of her, the father is successor to the property.

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3 The father is a common parent to other sons.] The mother is, in respect of sons, not a common parent to several sets of them. and her propinquity is therefore more immediate, compared with the father's. But his paternity is common; since he may have sons by women of equal rank with himself, as well as children by wives of the Kshatriya and other inferior tribes, and his nearness is therefore mediate, in comparison of the mother's. The mother consequently is nearest to her child; and she succeeds to the estate in the first instance, since it is ordained by a passage of Manu, that the person, who is nearest of kin, shall have the property. Subodhini.

5. On failure of her, the father is successor to the property.] The commentator, Balam-bhatta, is of opinion, that the father should inherit first and afterwards the mother, upon the analogy of more distant kindred, where the paternal line has invariably the preference before the maternal kindred: and upon the authority of several express passages of law Nanda Pandita, author of commentaries on the Mitakshara and on the institutes of Vishnu. had before maintained the same opinion. But the elder commentator of the Mitakshara. Visvesvara-bhatta has in this instance followed the text of his author in his own treatise entitled Madana-Parijata, and has supported Vijnanesvara's argument both there and in his commentary named Subodhini. Much diversity of opinion does indeed prevail on this question. Srikara maintains, that the father and mother inherit together and the great majority of writers of eminence (as Aparарka and Kamalakara, and the authors of the Smriti-chandrika, Madna-ratna, Vyavahara-myukha, &c.) gives the father the preference before the mother. Jimuta-vahana and Raghunandana have adopted this doctrine. But Vachespati-misra, on the contrary, concurs with the Mitakshara in placing the mother before the father; being guided by an erroneous reading of the text of Vishnu (Sect. 1. § 6.), as is remarked in the Viramitrodaya. The author of the latter work proposes to reconcile these contradictions by a personal distinction. If the mother be individually more venerable than the father, she inherits; if she be less so, the father takes the inheritance.

* Manu, 9, 187.

SECTION IV

Right of the Brothers.

1 Next to the parents, the brothers inherit.

1. On failure of the father, brethren share the estate. Accordingly Manu says, "Of him, who leaves no son the father shall take the inheritance of the brothers."*

2 Dharesvara affirms the prior right of the paternal grandmother, on the ground of a passage of Manu

2. It has been argued by Dharesvara, that, 'under the following text of Manu, "Of a son dying childless, the mother shall take the estate; and, the mother also being dead, the father's mother shall take the heritage;"† even while the father is living, if the mother be dead, the father's mother, or in other words the paternal grandmother, and not the father himself, shall take the succession: because wealth, devolving upon him, may go to sons dissimilar by class; but what is inherited by the paternal grandmother, goes to such only as appertain to the same tribe: and therefore the paternal grandmother takes the estate'

3 But that is contradicted by Visvarupa, citing another passage of the same author.

The holy teacher [Visvarupa‡] does not assent to that doctrine. because the heritable right of sons even dissimilar by class has been expressly ordained by a passage above cited: "The sons of a Brahmana, in the several tribes, have four shares, or three, or two or one."§

ANNOTATIONS.

1 Brethern] The commentators, Nanda Pandita and Balam-bhatta, consider this as intending 'brothers and sisters', in the same manner in [illegible]h "parents" have been explained 'mother and father,' (Sect 3. § 2) and conformably with an express rule of grammar (Panini, 1 2 68.) They observe, that the brother inherits first and, in his default, the sister. This opinion is controverted by Kamalakara and by the author of the Vyavahara-mayukha.

2. It has been argued by Dharesvara] It had been shown (Sect. 3), that the father inherits on failure of the mother. But that is stated otherwise by different authors. To refute the opinion maintained by one of them the author reverts to the subject by a retrospect analogous to the backward look of the lion Subodhini and Balam-bhatta

Because wealth, devolving on him. may go to sons dissimilar.] The meaning is this if the succession be taken by the father, the property becomes a paternal estate, and may devolve on his sons whether belonging to the Murddhavasikta [or another mixt‖] tribe or to his own class But, if it be taken by the grandmother, it becomes a maternal estate and devolves on persons of the same, tribe, namely her daughters; or successively, on failure of them, her daughter's sons, her own sons, and so forth. Subodhini and Balam-bhatta.

* Manu, 9, 185 Vide Sect. 1. § 7. † Manu, 9. 217. Vide Sect. § 7.
‡ The name is supplied by the Subodhini.
§ Yajnavalkya, 2. 126. Vide supra. C. 1. Sect. 8. § 1. ‖ Balam-bhatta.

4. A next of Manu, excluding the king, intends the sovereign not the Kshatriya.

4 But the passage of Manu expressing that "The property of a Brahmana shall never be taken by the king,"* intends the sovereign, not a son [of the late owner by a woman of the royal or military tribe].

5. The whole blood inherits first, as nearest of kin.

5 Among brothers, such, as are of the whole blood, take the inheritance in the first instance, under the text before cited. "To the nearest sapinda, the inheritance next belongs"† Since those of the half blood are remote through the difference of the mothers

6. Next the half blood.

6. If there be no uterine (or whole) brothers, those by different mothers inherit the estate

7. After brothers, nephews inherit the like manner.

7. On failure of brothers also, their sons share the heritage in the order of the respective fathers

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4. Intends the sovereign, not a son] It does not a son] It does not prohibit the succession of a Brahmana's son by a Kshatriya wife, denominated king as being of his mother's tribe. Which is the royal or military one. But it relates to an escheat to the sovereign. Therefore it is not an exception to the passage cited in the preceding paragraph, and Visvarupa's reasoning holds good, that 'Dharesvara's objection would be valid, if there were any harm in the ultimate succession of sons dissimilar by class. But that is not the case. On the contrary, they are expressly pronounced by the text here cited, to be partakers of inheritance' Subodhini.

6. If there be no uterine (or whole) brothers, those by different mothers inherit.) The author of the Vyavahara-mayukha censures the preference here given to the brothers of the half blood before the nephews, being sons of brothers of the whole blood.

7. Their sons share the heritage] Including, say Nanda Pandita and Balam-bhatta, the daughters as well as the sons of brothers, and the sons and daughters of sisters. This consequently will comprehend all nephews and nieces.

In the order of the respective fathers.] In their order as brothers of the whole blood, and of the half blood. Balam-bhatta.

By analogy to the case of grandsons by different fathers (Chap. I. Sect. 8.) the distribution of shares shall be made, through allotments to their respective fathers, and not in their own right, whether there be one, two, or many sons of each brother. Subodhini.

That is wrong. for the brethren had not a vested interest in their brother's wealth before their decease; and property was only vested in the nephews by the owner's demise. Balam-bnatta.

* Manu, 9, 189, Vide infra. Sect. 7 5. † Manu, 9. 187. Vide Sect. 3 § 3.

8. In case of competition between brothers and nephews, the nephews have no title to the succession for their right of inheritance is declared to be on failure of brothers [" both parents, brothers likewise, and their sons." Sect. 1. § 2.*]

8. They do not share with their uncles

9. However, when a brother has died leaving no male issue [nor other nearer heir,†] and the estate has consequently devolved on his brothers indifferently, if any one of them die before a partition of their brother's estate takes place, his sons do in that case acquire a title through their father: and it is fit, therefore, that a share should be allotted to them, in their father's right, at a subsequent distribution of the property between them and the surviving brothers

9. But the take a share which had vested in their father

SECTION V

Succession of kindered of the same family name termed Gotraja or gentiles

1 If there be not even brother's sons, gentiles share the estate Gentiles are the paternal grandmother and relations connected by funeral oblations of food and libations of water. *(a)*

1 Next to the nephew, the kindred are heirs

2 In the first place the paternal grandmother takes the inheritance The paternal grandmother's succession immediately after the mother, was seemingly suggested by the text before cited, " And, the mother also being dead, the father's mother shall take the heritage :"‡ no place, however, is found for her in the compact series of heirs from the father to the nephew: and the text (" the father's mother shall take the heritage ") is intended only to indicate her general competency for inheritance. She must, therefore, of course succeed immediately after the nephew; and thus there is no contradiction.

2. First the paternal grandmother.

ANNOTATIONS.

1. Gentiles.] Gotraja or persons belonging to the same general family (gotra) distinguised by a common name . these answer nearly to the *Gentiles* of the Roman law.

2. She must, therefore, of course succeed.] Some copies of the Mitakshara read this passage differently. The variation is noticed in the commentary of Balam-bhatta, viz. ' She succeeds, after the preceding claimants, if they be dead,' uparitana-mitanantaram instead of utkarshe tat sutanantaram. The commentary remarks, that the ' preceding (uparitana) claimats' are the father and the rest down to the brother's son.

* Subodhini and Balam-bhatta. † Balam-bhatta ‡ Sect. 1. § 7.

(*a*) In the original the words used are Sapindas and Samanodakas Gotrajas or gentiles are described by those terms and the reference to funeral oblations though etymologicaly correct is not quite accurate.—**ED.**

3. Next the paternal grandfather.

3. On failure of the paternal grandmother, the (gotraja) kinsmen sprung from the same family with the deceased and (sapinda) connected by funeral oblations, namely the paternal grandfather and the rest, inherit the estate For kinsmen sprung from a different family, but connected by funeral oblations, *(a)* are indicated by the term cognate (bandhu Sect 6)

4 After him, the uncles and their sons

4 Here, on failure of the father's descendants, the heirs are successively the paternal grandmother, the paternal grandfather, the uncles and their sons

5 Then the great-grandmother, great-grand-

5. On failure of the paternal grandfather's line, the paternal great-grandmother, the great-grandfather, his son and their issue, inherit In this manner must be understood the suc-

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3. On failure of the paternal grandmother... . the paternal grandfather.] Balam-bhatta insists, that the grandfather inherits before the grandmother, as the father before the mother See Section 3

5 In this manner must be understood the succession of kindred] The Subodhini, commenting on the first words of the following section, carries the enumeration a little further . viz. 'the paternal great-grandfather's mother, great-grandfather's father. great-grandfather's brothers and their sons The paternal great-grandfather's grandmother. great-grand-father's grandfather. great-grandfather's uncles and their sons. The same analogy holds in the succession of kindred connected by a common libation of water '

The scholiast of Vishnu, who is also one of the commentators of the Mitakshara, states otherwise the succession of the near and distant kindred, in expounding the passage of Vishnu "If no brother's son exist, it passes to kinsmen (bandhu.) in their default it devolves on relations (sakulya) "* where Balam-bhatta, on the authority of a reading found in the Madana-ratna, proposes to transpose the terms bandhu and sakulya , for the purpose of reconciling Vishnu with Yajnavalkya, by interpreting sakulya in the sense of gotraja or kinsmen sprung from the same family. Nanda Pandita, preserving the common reading, says 'kinsmen (bandhu) are sapindas ; and these may belong to the same general family or not First those of the same general family (sagotra) are heirs They are three, the father paternal grandfather, and great-grandfather ' as also three descendants of each The order is this In the father's line, on failure of the brother's son, the brother's son's son is heir. In default of him, the paternal grandfather, his son and grandson. Failing these, the paternal great grandfather, his son and grandson. In this manner the succession passes to the fourth degree inclusive; and not to the fifth : for the text expresses. 'The fifth has no concern with the funeral oblations "† The daughters of the father and other ancestors must be admitted, like the daughter of the man himself, and for the same reason. On failure of the father's kindred connected by funeral oblations, the mother's kindred are heirs . namely the maternal grandfather, the maternal uncle and his son ; and so forth. In default of these, the successors are the mother's sister, her son and the rest."

* Vishon 17. 11 † Manu, 9. 186.

(a) Here also Sapinda has been translated as connected by funeral oblation. It should be connected by particles of body —ED.

father, granduncles and so forth, to the seventh degree.

cession of kindred belonging to the same general family and connected by funeral oblations.

6. Afterwards more distant kindered either to the 14th degree; or as far as consanguinity is ascertainable: so Manu describes them

6. If there be none such, the succession devolves on kindered connected by libations of water: and they must be understood to reach to seven degrees beyond the kindred connected by funeral oblations of food(a): or else, as far as the limits of knowledge as to birth and name extend. Accordingly Vrihat-Manu says "The relation of the sapindas, or kindred connected by the funeral oblation, ceases with the seventh person: and that of samanodakas, or those connected by a common libation of water, extends to the fourteenth degree; or as some affirm, it reaches as far as the memory of birth and name extends This is signified by gotra or the relation of family name."*

ANNOTATIONS.

The commentator takes occassion to censure an interpretation, which corresponds with that of the Mitakshara as delivered in the following section (S 6 §); and according to which the cognate kindred of the man himself, of his father and of his mother are the sons of his father's sister and so forth because it would follow, that the father's sister's son and the rest would inherit, although the man's own sister and sister's sons were living. Balam-bhatta, however, repels this objection by the remark, that the sister and sister's sons have been already noticed as next in succession to the brother and brother's sons. which is indeed Nanda Pandita's own doctrine.

He adds, 'after the heirs above mentioned, the sakulya or distant kinsman is entitled to the succession · meaning a relation in the fifth or other remoter degree.'

This whole order of succession, it may be observed, differs materially from that which is taught in the text of the Mitakshara. On the other hand, the author of the Viramitrodaya has exactly followed the Mitakshara; and so has Kamalakara: and it is also confirmed by Madhava Acharya, in the Vyavahara-Madhava, as well as by the Smriti-chandrika.

But the author of the Vyavahara-mayukha contends for a different series of heirs after the brother's son. '1st the paternal grandmother; 2d the sister; 3d the paternal grandfather and the brother of the half blood, as equally near of kin; 4th the paternal great-grandfather, the paternal uncle and the son of a brother of the half blood, sharing together as in the same degree of affinity.' He has not pursued the enumeration further; and the principle stated by him, nearness of kin, does not clearly indicate the rule of continuation of this series.

* The first part of this passage occurs in Manu's Institutes. 5. 60. The remainder of the text differs.

(a). Here also the word is Sapinda and is inaccurately translated by Colebrooke.—Ed.

SECTION VI.

On the succession of cognate kindred Bandhu.

1. After gentiles, cognates are heirs. They are of three sorts, as distinguished in a passage of law.

1. On failure of gentiles, the cognates are heirs. Cognates are of three kinds; related to the person himself, to his father, or to his mother: as is declared by the following text. "The sons of his own father's sister, the sons of his own mother's sister, and the sons of his own maternal uncle must be considered as his own cognate kindred. The sons of his father's paternal aunt, the sons of his father's maternal aunt, and the sons of his father's maternal uncle, must be deemed his father's cognate kindred. The sons of his mother's paternal aunt, the sons of his mother's maternal aunt and the sons of his mother's maternal uncle, must be reckoned his mother's cognate kindred."*

2. First the kindred of the late owner; then those of his father; and lastly those of his mother.

2. Here, by reason of near affinity, the cognate kindred of the deceased himself, are his successors in the first instance: on failure of them, his father's cognate kindred: or, if there be none, his mother's cognate kindred. This must be understood to be the order of succession here intended.

ANNOTATIONS.

1. The cognates are heirs] Bandhu, cognate or distant kin, corresponding nearly to the *Cognati* of the Roman law.

Cognates are of three kinds] Balam-bhatta notices a variation in the reading, bāndhavāh for bandhavah. It produces no essential difference in the interpretation.

Related to the person himself, to his father or to his mother.] Apararka, as remarked by Kamalakara, disallows the two last classes of cognate kindred, as having no concern with inheritance; and restricts the term bandhu, in the text, to the kindred of the owner himself. The author of the Vyavahara-mayukha confutes that restriction.

2. This must be understood to be the order of succession.] See a note at the close of the last section.

* The text is seemingly ascribed by the commentator Balam-bhatta to Vriddha Satatapa. But it is quoted in the Vyavahara-Madhava as a text of Baudhayana.

SECTION VII.

On the succession of strangers upon failure of the kindred.

1. After kindred the preceptor is heir; by the text of Apastamba: and, next to him, the pupil.

1. If there be no relations of the deceased, the preceptor, or, on failure of him, the pupil, inherits, by the text of Apastamba. "If there be no male issue, the nearest kinsman inherits: or, in default of kindred, the preceptor; or, failing him, the disciple."

2 And, failing those, the fellow-student.

2. If there be no pupil, the fellow-student is the successor. He, who received his investiture, or instruction in reading or in the knowledge of the sense of scripture, from the same preceptor, is a fellow-student.

3. If there be none, a learned priest is heir; according to Gautama.

3. If there be no fellow-students, some learned and venerable priest should take the property of a Brahmana, under the text of Gautama: "Venerable priest should share the wealth of a Brahmana, who leaves no issue."*

4. Or any Brahmana, as Manu has provided.

4. For want of such successors, any Brahmana may be the heir. So Manu declares: "On failure of all those, the lawful heirs are such Brahmanas, as have read the three Vedas, as are pure in body and mind, as have subdued their passions. Thus virtue is not lost."†

5. But not the king: so Manu and Narada declare.

5. Never shall a king take the wealth of a priest; for the text of Manu forbids it: "The property of a Brahmana shall never be taken by the king: this is a fixed law."‡ It is also declared by Narada: "If there be no heir of a Brahmana's wealth, on his demise, it must be given to a Brahmana. Otherwise the king is tainted with sin."§

6. In other cases the sovereign takes the escheat: as is ordained by Manu.

6. But the king, and not a priest, may take the estate of a Kshatriya or other person of an inferior tribe, on failure of heirs down to the fellow-student. So Manu ordains: "But the wealth of the other classes, on failure of all [heirs,] the king may take."||

* Gautama, 28. 39.

† Manu, 9. 188.

‡ Manu, 9. 189.

§ Not found in the Institutes of Narada.

|| Manu, 9. 189.

SECTION VIII.

On succession to the property of a hermit or of an ascetic.

1. The heirs of persons devoted to religion are specified by Yajnavalkya.

1. It has been declared, that sons and grandsons [or great-grand-sons*] take the heritage ; or, on failure of them, the widow or other successors. The author now propounds an exception to both those laws : "The heirs of a hermit, of an ascetic, and of a professed student, are, in their order, the preceptor, the virtuous pupil, and the spiritual brother and associate in holiness."†

2. Exposition of the text.

2. The heirs to the property of a hermit, of an ascetic, and of a student in theology, are, in order (that is, in the inverse order,) the preceptor, a virtuous pupil, and a spiritual brother belonging to the same hermitage.

3. The natural relations do not succeed. But the preceptor is heir of a professed student.

3. The student (brahmachari) must be a professed or perpetual one : for the mother and the rest of the natural heirs take the property of a temporary student ; and the preceptor is declared to be heir to a professed student as an exception [to the claim of the mother and the rest.‡]

4. And the pupil is the successor of an ascetic.

4. A virtuous pupil takes the property of a yati or ascetic. The virtuous pupil, again, is one who is assiduous in the study of theology, in retaining the holy science, and in practising its ordinances. For a person, whose conduct is bad, is unworthy of the inheritance, were he even the preceptor or [standing in] any other [venerable relation.]

ANNOTATIONS.

1. "A virtuous pupil."] The condition, that he be virtuous is intended generally. Hence the preceptor and the fellow hermit are successors in their respective cases, provided their conduct be unexceptionable. With a view to this, Yajnavalkya has placed the words "virtuous pupil" in the middle of the text, to indicate the connection of the epithet with the preceding and following terms. Subodhini, &c.

4. A yati or ascetic] The term 'ascetic' is in this translation used for the yati or sannyasi ; and 'hermit' or 'anchoret' for the vanaprastha. In former translations, as in the version of Manu by Sir William Jones, the two last terms were applied severally to the two orders of devotion.

* Balam-bhatta. † Yajnavalkya, 2. 138. ‡ Subodhini.

5. But the companion of a hermit is his heir.

5. A spiritual brother and associate in holiness takes the goods of a hermit (vanaprastha.) A spiritual brother is one who is engaged as a brotherly companion [having consented to become so.*] An associate in holiness is one appertaining to the same hermitage. Being a spiritual companion, and belonging to the same hermitage, he is a spiritual brother associate in holiness(*a*).

6 In default of those heirs respectively, an associate in holiness is the successor.

6. But, on failure of these, (namely the preceptor and the rest,) any one associated in holiness(*b*) takes the goods ; even though sons and other natural heirs exist.

7. Objection They can have no property by inheritance, being pronounced disqualified by Vasishtha nor any property acquired by themselves, being incapable of aquisitions, as shown by Gautama, &c

7. Are not those, who have entered into a religious profession, unconcerned with hereditable property? Since Vasishtha declares, " They, who have entered into another order, are debarred from shares."† How then can there be a partition of their property? Nor has a professed student a right to his own acquired wealth : for the acceptance of presents, and other means of acquisition, [as officiating at sacrifices and so forth,‡] are forbidden to him. And, since Gautama ordains, that " A mendicant shall have no hoard ;"§ the mendicant also can have no effects by himself acquired.

8. Answer. A hermit may have a hoard of necessaries for a day or a year as intimated by Yajnavalkya

And an ascetic and a professed student have clothes and other necessaries.

8. The answer is, a hermit may have property : for the text [of Yajnavalkya] expresses " The hermit may make hoard of things sufficient for a day a month, six months, or a year ; and, in the month of Asvina, he should abandon [the residue of] what has been collected."¶ The ascetic too has clothes, books and other requisite articles : for a passage [of the Veda†] directs, that " he should wear clothes to cover his privy parts ;" and a text [of law**] prescribes, that " he should take the requisites for his austerities and his sandals." The professed student likewise has clothes to cover his body ; and he possesses also other effects.

9. Succession to such property is regulated.

9. It was therefore proper to explain the partition or inheritance of such property.

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* Subodhini. † Vasishtha, 17. 43. Vide infra Sect. 10. 3.
‡ Balam-bhatta. § Gautama, 3. 6. ‖ Yajnavalkya, 3. 47. See Manu, 6. 15.
¶ Balam-bhatta. ** Balam-bhatta.

(*a*). The following is a more accurate translation of the text · A spiritual brother who has been accepted as brother and who belongs to the same order takes the goods of a Vanaprastha —ED.

(*b*). 'Associated in holiness' is not correct. It should be 'belonging to the same order.'—ED.

SECTION IX.

On the re-union of kinsmen after partition.

1. The author next propounds an exception to the maxim, that the wife and certain other heirs succeed to the estate of one who dies leaving no male issue. "A re-united [brother] shall keep the share of his re-united [co-heir,] who is deceased; or shall deliver it to [a son subsequently] born."*

1. Yajnavalkya declares the preferable right of the re-united parcener, before the widow, &c.

2. Effects, which had been divided and which are again mixed together, are termed re-united. He, to whom such appertain, is a re-united parcener.

2. Explanation of re-united parcener.

3. That cannot take place with any person indifferently; but only with a father, a brother, or a paternal uncle: as Vrihaspati declares. "He who, being once separated, dwells again through affection with his father, brother, or paternal uncle, is termed re-united."

3 Re-union is between certain relations only · so Vrihaspati.

4. The share or allotment of such a re-united parcener deceased, must be delivered by the surviving re-united parcener, to a son subsequently born, in the case where the widows pregnancy was unknown at the time of the distribution. Or, on failure of male issue, he, and not the widow, nor any other heirs, shall take the inheritance.

4. The deceased's share must be given to his posthumous son, or, if there be none, may be retained by the re-united parcener

5. The author states an exception to the rule, that a re-united brother shall keep the share of his re-united co-heir: "But an uterine [or whole] brother shall thus retain to deliver the allotment of his uterine relation."†

5. A limitation of the preceding rule is contained in the sequel of the text.

ANNOTATIONS.

4. Or, on failure of male issue, he and not the widow, &c. shall take the inheritance.] The singular number is here indeterminate. Therefore, if there be two or more re-united parceners, they shall divide the estate. A maintenance must be allowed to the widow. Balam-bhatta.

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* Yajnavalkya, 2. 139.

† Yajnavalkya, 2, 139.

6. The words "re-united brother" and "re-united co-heir" are understood. Hence the construction, as in the preceding part of the text, is this: The allotment of a re-united brother of the whole blood, who is deceased, shall be delivered, by the surviving re-united brother of the whole blood, to son born subsequently. But on failure of such issue, he shall retain it. Thus, if there be brothers of the whole blood and half blood, an uterine [or whole] brother, being a re-united parcener, not a half brother who is so, takes the estate of the re-united uterine brother. This is an exception to what had been before said (§ 1.)

6. Exposition of it. The whole blood has the preference before the half blood.

7. Next, in answer to the inquiry, who shall take the succession when a re-united parcener dies leaving no male issue, and there exists a whole brother not re-united, as well as a half brother who was associated with the deceased? the author delivers a reason why both shall take and divide the estate.

7. Yajnavalkya delivers a rule concerning the participation of brethren of the half-blood.

"A half brother, being again associated, may take the succession, not a half brother though not re-united: but one, united [by blood, though not by co-parcenery,] may obtain the property; and not [exclusively] the son of a different mother."*

8. A half brother, (meaning one born of a rival wife,) being a re-united parcener, takes the estate; but a half brother, who was not re-united, does not obtain the goods. Thus, by the direct provisions of the text, and by the exception, re-union is shown to be a reason for a half brother's succession.

8. Interpretation of the text. The half brother may share if again associated in family partnership.

9. The term "not re-united" is connected also with what follows: and hence, even one who was not again associated, may take the effects of a deceased re-united parcener. Who is he? The author replies: "one united;" that is,

9. And the whole brother, though not so associated.

ANNOTATIONS.

6. A son born subsequently] The widow's pregnancy not having been apparent at the time of the partition.

7. "A half brother, being again associated, &c."] The text admits of different interpretations besides variations in the reading. See Jimutavahana, C. 11, Sect. 5, § 13—14

9. The term "not reunited" is connected also with what follows.] It is connected with both phrases, like a crow looking two ways at once. Hence it constitutes, with what follows, another sentence. Subodhini.

* Yajnavalkya, 2. 140.

one united by the indentity of the womb [in which he was conceived ;] in other words, an uterine or whole brother. It is thus declared, that relation by the whole blood is a reason for the succession of the brother, though not re-united in co-parcenery.

10. For the half brother, though associated, is not sole heir.

10. The term "united" likewise is connected with what follows: and here it signifies re-united [as a co-parcener] The words "not the son of a different mother" must be interpreted by supplying the affirmative particle (*eva*) understood. Though he be a re-united parcener, yet, being issue of a different mother, he shall not exclusively take the estate of his associated co-heir.

11. Thus both may share, for the rights of both may subsist together.

11. Thus, by the occurrence of the word "though" (*api*) in one sentence ("though not re-united," &c § 7.) and by the denial implied in the restrictive affirmation (*eva* "exclusively,) understood in the other, ("one united may take the property, and not exclusively the son of a different mother,") it is shown, that a whole brother not re-united, and a half brother being re-united, shall take and share the estate: for the reasons of both rights may subsist at the same instant.

12. This is confirmed by passage of Manu.

12. This is made clear by Manu, who, after premising partition among re-united parceners ("It brethren, once divided and living again together as parceners, make a second partition,"*) declares "should the eldest or youngest of several brothers be deprived of his allotment at the distribution, or should any one of them die, his share shall not be lost: but his uterine brothers and sisters, and such brothers as were re-united after a separation, shall assemble together and divide his share equally."†

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One united by the identity of the womb] In like manner, a father, though not re-united with the family, shall take a share of the property of his son, and a son, though not re-united, shall receive a share of the estate of his father, from a re-united parcener. This, according to the author of the Subodhini, is implied the Veda describing the wife as becoming a mother to her husband, who is identified with his offspring. But Balam-bhatta does not allow the inference

11. The reasons of both rights may subsist at the same instant.] The re-union of the half brother in family partnership, and the whole brother's relation by blood. Balam-bhatta.

† Manu, 9, 211—212.

13 Interpretation of the text.

13. Among re-united brothers, if the eldest, the youngest or the middlemost, at the delivery of shares, (for the indeclinable termination of the word denotes any case :) that is, at the time of making a partition, lose or forfeit his share by his entrance into another order [that of a hermit or ascetic,*] or by the guilt of sacrilege,(a) or by any other disqualification ; or if he be dead ; his allotment does not lapse, but shall be set apart. The meaning is, that the re-united parceners shall not exclusively take it. The author states the appropriation of the share so reserved : " His uterine brothers and sisters, &c "(§ 12.) Brothers of the whole blood, or by the same mother, though not re-united, share that allotment so set apart. Even though they had gone to a different country, still, returning thence and assembling together, they share it : and that " equally ;" not by a distribution of greater and less shares. Brothers of the half blood, who were re-united after separation, and sisters by the same mother, likewise participate. They inherit the estate and divide it in equal shares.

SECTION X

On exclusion from inheritance.

1. An exception to the succession of heirs is propounded by Yajnavalkya.

1. The author states an exception to what has been said by him respecting the succession of the son, the widow and other heirs, as well as the re-united parcener.

" An impotent person, an outcaste, and his issue, one lame, a madman, an idiot, a blind man, and a person afflicted with an incurable disease, as well as others [similarly disqualified,] must be maintained ; excluding them, however, from participation."†

ANNOTATIONS.

13. They inherit the estate and divide it in equal shares.] This supposes the brothers of the half blood to belong to the same tribe But, if they are of different tribes, the shares are four, three, two or one, in the order of the classes ; since there is no reason for restricting that rule of distribution. Balam-bhatta.

1. " An impotent person, an outcaste and his issue."] The initial words are transposed by Jimuta-vahana C. 5. § 10.

"An impotent person."] Whether naturally so, or by castration, Balam-bhatta.

The offspring of an outcaste.] Of one who has not performed the requisite penance and expiation. Balam-bhatta.

* Balam-bhatta. † Yajnavalkya, 2. 141.

(a) Sacrilege is not correct ; it should be murder of a Brahmana.—ED.

2. "An impotent person;" one of the third gender (or neuter sex.) "An outcaste;" one guilty of sacrilege(*a*) or other heinous crime. "His issue;" the offspring of an outcaste. "Lame;" deprived of the use of his feet. "A madman;" affected by any of the various sorts of insanity proceeding from air, bile, or phlegm, from delirium, or from planetary influence(*b*). "An idiot;" a person deprived of the internal faculty: meaning one incapable of discriminating right from wrong "Blind;" destitute of the visual organ. "Afflicted with an incurable disease;" affected by an irremediable distemper, such as marasmus or the like.

2. Exposition of the text. Impotent persons, outcastes, madmen, idiots and persons incurably diseased, are excluded from inheritance.

3. Under the term "others" are comprehended one who has entered into an order of devotion, an enemy to his father, a sinner in an inferior degree, and a person deaf, dumb, or wanting any organ. Thus Vasishtha says, "They, who have entered into another order, are debarred from shares."* Narada also declares, "An enemy to his father, an outcaste, an impotent person, and one who is addicted to vice, take no shares of the inheritance even though they be legitimate: much less, if they be sons of the wife by an appointed kinsman."† Manu likewise ordains, "Impotent persons and outcastes are excluded from a share of the heritage; and so are persons born blind and deaf, as well as madmen, idiots, the dumb, and those who have lost a sense [or a limb."‡]

3. So are persons entering into an order of devotion, an unnatural son, a sinner, and one who has lost a sense or a limb: according to Vasishtha, Narada, and Manu.

4. Those who have lost a sense or a limb.] Any person, who is deprived of an organ [of sense or action] by disease or other cause, is said to have lost that sense or limb.

4. Explanation of the text.

5. These persons (the impotent man and the rest) are excluded from participation. They do not share the estate. They must be supported by an allowance of food and raiment only: and the penalty of degradation is incurred, if

5. The persons above described are excluded from participation; but

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3. "They, who have entered into another order."] Into one of devotion. The orders of devotion are, 1st, that of the professed or perpetual student; 2d, that of the hermit; 3d, the last order or that of the ascetic. Balam-bhatta.

5. "A wise man should give all of them food and raiment."] Other authorities (as Devala and Bhaudhayana) except the outcaste and his offspring. That exception not being here made, it is to be inferred, that one

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* Vasishtha, 17. 43. † Narada, 13. 21.
‡ Manu, 9. 201. § Manu, 9. 2.

(*a*) 'Sacrilege' should be 'murder of a Brahmana.'—Ed.
(*b*) 'Planetary influence' should be 'demoniacal possession.'—Ed.

are entitled to a maintenance, as declared by Manu.

they be not maintained. For Manu says, "But is it fit, that a wise man should give all of them food and raiment without stint to the best of his power : for he, who gives it not, shall be deemed an outcaste."§ "Without stint" signifies 'for life.'

6 The defect must have preceded the partition.

6. They are debarred of their shares, if their disqualification arose before the division of the property. But one already separated from his co-heirs, is not deprived of his allotment.

7. If it be removed afterwards, a share must be given, in like manner as a son born after partition takes an allotment.

7. If the defect be removed by medicaments or other means [as penance, and atonement*] at a period subsequent to partition, the right of participation takes effect. by analogy [to the case of a son born after separation.] "When the sons have been separated, one, who is afterwards born of a woman equal in class, shares the distribution."†

8. A woman is excluded for like defects.

8. The masculine gender is not here used restrictively in speaking of an outcaste and the rest. It must be therefore understood, that the wife, the daughter, the mother, or any other female, being disqualified for any of the defects which have been specified, is likewise excluded from participation.

9 Sons shall share, if free from similar disqualifications So Yajnavalkya.

9. The disinherison of the persons above described seeming to imply disinherison of their sons, the author adds :

"But their sons, whether legitimate, or the offspring of the wife by a kinsman, are entitled to allotments, if free from similar defects."‡

10. Interpretation of the text

10. The sons of these persons, whether they be legitimate offspring or issue of the wife, are entitled to allotments, or are rightful partakers of shares ; provided they be faultless or free from defects which should bar their participation, such as impotency and the like.

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* whose offence may be expiated and who is disposed to perform the enjoined penance, should be maintained ; not one whose crime is inexpiable. Balam-bhatta.

6. If their disqualification arose before the division of the property.] The disqualification of the outcaste and the rest who are not excluded for natural defects. Balam-bhatta.

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* Balam-bhatta. † Yajnavalkya, 2. 123. Vide supra. C. 1. Sect. 6. § 1

‡ Yajnavalkya, 2. 142.

11. Disqualified persons are not to adopt sons.

11. Of these [two descriptions of offspring§] the impotent man may have that termed issue of the wife; the rest may have legitimate progeny likewise. The specific mention of "legitimate" issue and "offspring of the wife" is intended to forbid the adoption of other sons.

12. Their daughters must be supported, until married; as Yajnavalkya declares.

12. The author delivers a special rule concerning the daughters of disqualified persons:

"Their daughters must be maintained likewise, until they are provided with husbands"‖

13 Explanation of the text.

13. Their daughters, or the female children of such persons, must be supported, until they be disposed of in marriage. Under the suggestion of the word "likewise" the expenses of their nuptials must be also defrayed.

14 Their wives must be maintained, unless unchaste so Yajnavalkya directs.

14. The author adds a distinct maxim respecting the wives of disqualified person:

"Their childless wives, conducting themselves aright, must be supported; but such, as are unchaste, should be expelled, and so indeed should those, who are perverse"¶

15 Exposition of the passage.

15. The wives of the persons, being destitute of male issue and being correct in their conduct, or behaving virtuously, must be supported or maintained. But if unchaste, they must be expelled; and so may those, who are perverse These last may indeed be expelled: but they must be supported, provided they be not unchaste. For a maintenance must not be refused solely on account of perverseness.

SECTION XI.

On the separate property of a woman.

1. Woman's property described by Yajnavalkya.

1. After briefly pronouncing the division of wealth left by the husband and wife, ("Let sons divide equally both the effects and the debts, after the demise of their two parents."*) the partition of a man's goods has been described at

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1. As also any other separate acquisition] In Jimuta-vahana's quotation of the text, (C. 4 Sect. 1 § 13.) the conjunctive and pleonastic

* Balam-bhatta † Yajnavalkya, 2. 142. ‡ Yajnavalkya, 2. 143.
§ Yajnvalkya, 2. 118. Vide supra, C. I. Sect. 3. § 1.

large. The author, now intending to explain fully the distribution of a woman's property, begins by setting forth the nature of it:

"What was given to a woman by the father, the mother, the husband or a brother, or received by her at the nuptial fire, or presented to her on her husband's marriage to another wife, as also any other [separate acquisition,] is denominated a woman's property."*

2. Interpretation of the text.

2. That, which was given by the father, by the mother, by the husband, or by a brother; and that which was presented [to the bride] by the maternal uncles and the rest [as paternal uncles, maternal aunts, &c.†] at the time of the wedding, before the nuptial fire; and a gift on a second marriage, or gratuity on account of supersession, as will be subsequently explained, ("To a woman whose husband marries a second wife, let him give an equal sum as a compensation for the supersession."§ 34.) and also property which she may have acquired by inheritance, purchase, partition, seizure or finding,‡ are denominated by Manu and the rest 'woman's property.'

3. Woman's property is not a technical expression.

3. The term 'woman's property' conforms, in its import, with its etymology, and is not technical: for, if the literal sense be admissible, a technical acceptation is improper.

4. Manu's enumeration of six sorts denies a less number, and a greater.

4. The enumeration of six sorts of woman's property by Manu ("What was given before the nuptial fire, what was presented in the bridal procession, what has been bestowed in taken of affection or respect, and what has been received by her from her brother, her mother,

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particles chaiva (cha-eva) are here substituted for the suppletory term adya. That reading is censured by Balam-bhatta.

2. Before the nuptial fire.) Near it. Subodhini.

On account of supersession] Supersession is the contracting of a second marriage through the influence of passion, while a first wife lives, who was married to fulfil religious obligations. Subodhini.

Property which she may have acquired by inheritance.] The commentator, Balam-bhatta, defends his author against the writers of the eastern school (Jimuta-vahana, &c.) on this point. Wealth, devolving on a woman by inheritance, is not classed by the authorities of that school with 'woman's property.' See Jimuta-vahana, C. 4. and C. 11. Sect. 1. § 8.

3. The term 'woman's property' is not technical.) This is contrary to the doctrine of Jimuta-vahana, C. 4.

4 "Bestowed in token of affection or respect."] This passage is read differently in the Ratnakara and by Jimuta-vahana (C. 4. Sect. 1. § 4) It is here translated conformably with Balam-bhatta's interpretation

* Yajnavalkya, 2. 144. † Balam-Bhatta. ‡ Vide C. 1 Sect. 1 § 8.

or her father, are denominated the sixfold property of a woman;"*) is intended, not as a restriction of a greater number, but as a denial of a less.

5. Katyayana defines those several sorts.

5. Definitions of presents given before the nuptial fire and so forth have been delivered by Katyayana: "What is given to women at the time of their marriage, near the nuptial fire, is celebrated by the wise as women's property bestowed before the nuptial fire. That, again, which a woman receives while she is conducted from her father's house [to her husband's dwelling,] is instanced as the property of a woman, under the name of gift presented in the bridal procession. Whatever has been given to her through affection by her mother-in-law or by her father-in-law, or has been offered to her as a token of respect, is denominated an affectionate present. That, which is received by a married woman or by a maiden, in the house of her husband or of her father, from her brother or from her parents, is termed a kind gift."

6. Other sorts noticed by Yajnavalkya.

6. Besides [the author says.]

"That which has been given to her by her kindred; as well as her fee or gratuity, or anything bestowed after marriage."†

Explanation of his text.

What is given to a damsel by her kindred; by the relations of her mother, or those of her father. The gratuity, for the receipt of which a girl is given in marriage. What is bestowed or given after marriage, or subsequently to the nuptials.

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grounded on the subsequent text of Katyayana (§ 5); where two reasons of an affectionate gift are stated: one, simple affection, the other, respect shown by an obeisance at the woman's feet.

5. "From her father's house"] The Ratnakara and Chintamoni read "from the paternal abode." See Jimuta-vahana, C. 4. Sect. 1. § 6.

"Offered to her as a token of respect."] Given to her at the time of making an obeisance at her feet. Smriti-chandrika.

"Denominated an affectionate present"] This reading is followed in the Smrti-chandrika, Viramitrodaya, &c. But the Ratnakara, Chintamoni, and Vivada-chandra read 'denominated an acquisition through loveliness,' lavanyarjitam instead of priti-dattam.

"From her brother or from her parents."] The Kalpataru reads "from her husband." See Jimuta-vahana, C. 4. Sect 2. § 21.

"Termed a kind gift"] So the commentary of Balam-bhatta explains saudayika, as bearing the same sense with its etymon sudaya. He censures the interpretation which Jimuta-vahana has given (C. 4 Sect. 1. § 22.

6. The gratuity, for the receipt of which a girl is given in marriage.] is relates to a marriage in the form termed Asura or the like. Balam-

* Manu, 9. 194.

† Yajnavalkya, 2, 145.

7. Katyayana's definition of a gift subsequent Exposition of the passage.

7. It is said by Katyayana, "What has been received by a woman from the family of her husband at a time posterior to her marriage, is called a gift subsequent; and so is that, which is similarly received from the family of her father." It is celebrated as woman's property for this passage is connected with that which had gone before. (§ 5)

8 A woman's property goes to her kindred.

8. A woman's property has been thus described. The author next propounds the distribution of it:

"Her kinsmen take it, if she die without issue."*

9. Her husband or other heirs inherit on failure of issue.

9. If a woman die "without issue," that is, leaving no progeny; in other words, having no daughter, nor daughter's daughter, nor daughter's son, nor son, nor son's son; the woman's property, as above described, shall be taken by her kinsmen; namely her husband and the rest, as will be [forthwith†] explained.

10. The heirs are different, according to the form of the marriage ceremony as shown by Yajnavalkya.

10. The kinsmen have been declared generally to be competent to succeed to a woman's property. The author now distinguishes different heirs according to the diversity of the marriage ceremonies.

'The property of a childless woman married in the form denominated Brahma, or in any of the [unblamed modes of marriage,] goes to her husband: but, if she leave progeny, it will go to her [daughter's] daughters: and, in other forms of marriage [as the Asura, &c.] it goes to her father [and mother, on failure of her own issue."‡]

11. Explanation of the text In four unblamed forms of marriage, the husband is first entitled to the succession. after him, his nearest of kin. In the four other forms of

11. Of a woman dying without issue as before stated, and who had become a wife by any of the four modes of marriage denominated Brahma, Daiva, Arsha and Prajatapatya, the [whole§] property, as before described, belongs in the first place to her husband. On failure of him, it goes to his nearest kinsmen (sapindas) allied by funeral oblations. (*a*) But, in the other forms of marriage called Asura, Gandharba, Rakshasa and Paicacha; the property of a childless

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7. Similarly received from the family of her father"] The Ratnakara reads 'from her own family;' Jimuta-vahana, 'from the family of her kindred.' See Jimuta-vahana, C. 4. Sect. 1. § 2.

11. Dying without issue as before stated.] Without any of the five descendants above mentioned (§ 9.) Balam-bhatta.

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* Yajnavalkya, 2. 145. † Balam-bhatta.

‡ Yajnavalkya, 2. 146. § Balam-bhatta.

(*a*) "Allied by funeral oblations" is not correct and should be omitted.-ED.

marriage, the parents inherit; and first the mother; after her, the father: failing them, there next of kin.

woman goes to her parents, that is, to her father and mother. The succession devolves first (and the reason has been before explained,*) on the mother, who is virtually exhibited [first] in the elliptical phrase pitrigami implying 'goes (gachhati) to both parents (pitarau ;) that is, to the mother and to the father. On failure of them, their next of kin take the succession.

12. In every form of marriage, if there be issue, daughters inherit, or grand-daughters.

12. In all forms of marriage, if the woman "leave progeny;" that is, if she have issue; her property devolves on her daughters In this place, by the term "daughters," grand-daughters are signified, for the immediate female descendants are expressly mentioned in a preceding passage: "the daughters share the residue of their mother's property, after payments of her debts"†

13. First the unmarried daughter next the married one, who is unprovided, lastly, one who has a provision.

13. Hence, if the mother be dead, daughters take her property in the first instance. and here, in the case of competition between married and maiden daughters, the unmarried take the succession; but, on failure of them, the married daughters: and here again, in the case of competition between such as are provided and those who are unendowed, the unendowed take the succession first; but, on failure of them, those who are endowed. Thus Gautama says "A woman's property goes to her daughters unmarried, or unprovided,‡ 'or provided,' as is implied by the conjunctive particle in the text. "Unprovided" are such as are destitute of wealth or without issue. (*a*)

14. But brothers inherit the fee or gratuity; as ordained by Gautama.

14. But this [rule, for the daughter's succession to the mother's goods,§] is exclusive of the fee or gratuity. For that goes to brothers of the whole blood, conformably with the text of Gautama: "The sister's fee belongs to the uterine brothers: after [the death of] the mother,"‖

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12. In all forms of marriage.] Several variations in the reading of this passage are noticed by Balam-bhatta. as sarvehv api, or sarveshv eva, or sarveshu. There is only a shade of difference in the interpretation.

14. "After the death of the mother."] This version is according to the interpretation given in the Subodhini, which agrees with that of the scholiast of Gautama, the Kalpataru and other authorities. But the text is read and explained differently by Jimuta-vahana. (C. 4. Sect. 3. § 27.)

Balam-bhatta understands by the term 'mother,' in this place, the woman herself, or in short the sister, after whose death her fee or nuptial gratuity goes to her brothers.

* Sect. 3. † Yajnavalkya, 2. 118 Vide supra. C. 1. Sect. 3. § 8.
‡ Gautama, 28 22. Vide supra. C. 1. Sect. 3 § 11. § Balam-bhatta.
‖ Gautama, 28. 23. (*a*) 'Without issue or destitute of wealth' is the literal translation. The childless daughter should thus take first.—ED.

15. After daughters, grand-daughters in the female line inherit

15. On failure of all daughters, the grand-daughters in the famale line take the succession under this text: "if she leave progeny, it goes to her [daughter's] daughters."*

16 They share the allotments of their respective mothers. So Gautama directs.

16. If there be a multitude of these [grand-daughters,†] children of different mothers, and unequal in number, shares should be allotted to them through their mothers, as directed by Gautama: "Or the partition may be according to the mothers: and a particular distribution may be made in the respective sets."‡

17 But, if there be daughters, a trifle only is to be given to the grand-daughters. So Manu

17. But if there be daughters, as well as daughter's daughters, a trifle only is to be given to the grand-daughters. So Manu declares: "Even to the daughters of those daughters, something should be given, as may be fit, from the assets of their maternal grandmother, on the score of natural affection."§

18 In default of those grand-daughters, the sons of daughters inherit: as hinted by Narada.

18. On failure also of daughter's daughters, daughter's sons are entitled to the succession. Thus Narada says, "Let daughters divide their mother's wealth; or, on failure of daughters, their male issue."‖ For the pronoun refers to the contiguous term "daughters."

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16. Children of different mothers, and unequal in number.] Where the daughters were numerous, but are not living; and their female children are unequal in number, one having left a single daughter; another, two; and a third, three; how shall the maternal grandmother's property be distributed among her grand-daughters? Having put this question, the author reminds the readers of the mode of distribution of a paternal grandfather's estate among his grandsons. (C. 1. Sect. 5.) Subodhini.

18 "Their male issue"] Several variations in the reading of the last term are noticed in the commentary of Balam-bhatta: making the term either singular or plural, and putting it in the first or in the seventh case. He deduces, however, the same meaning from these different readings.

The pronoun refers to the contiguous term.] Jimuta-vahana, citing this passage for the succession of sons rather than of grandsons, seems to have understood the pronoun as referring to the remoter word 'mother.' See Jimuta-vahana. C. 4. Sect. 2 § 13.

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* Vide § 10 & 12. † Balam-bhatta. ‡ Gautama, 28. 15.

§ Manu, 9. 193. ‖ Narada, 13. 1.

24

19. After them, the male issue succeeds.
This is confirmed by Manu.

19. If there be no grandsons in the female line, sons take the property for it has been already declared, "the [male] issue succeeds in their default."* Manu likewise shows the right of sons, as well as of daughters, to their mother's effects: "When the mother is dead, let all the uterine brothers and the uterine sisters equally divide the maternal estate."†

20. Exposition of the text. The brothers & sisters do not share together, but successively.

20. 'All the uterine brothers should divide the maternal estate equally; and so should sisters by the same mothers' Such is the construction: and the meaning is, not that 'brothers and sisters share together,' for reciprocation is not indicated, since the abridged form of the conjunctive compound has not been employed:

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19. "Let all the uterine brothers ....equally divide"] In the Kalpataru the text is read "let all the sons by the same mother divide.' sarve putrah sahodarah instead of saman sarve sahodarah.

20. Since the abridged form of the conjunctive compound has not been employed.] Nouns coalesce and form a single word denominate dvandva or conjunctive compound, when the sense of the conjunctive particle (cha 'and') is denoted Panini, 2. 2 29. Vide supra Sect. 3 § 2.

The import of the particle, here intended, is either reciprocation (itaretara) explained to be the union, in regard to a single matter, of [illegible] t mutually related, and mixed or associated, though contrasted,' or it is cumulation (samahara) [illegible] union of such things, by an association, in which contrast is not marked' The other senses of the conjunctive particle are assemblage (samuchchaya) or 'the gathering together of two or more things independent of each other, but assembled in idea with reference to some common action or circumstance;' superaddition (anvachaya) or 'the connexion of a secondary and unessential with a primary and principal one, though a separate action or circumstance consequent to it.' In the two last senses of the conjunctive particle, there is not such a connexion of the terms as authorizes their coalition to form a compound term. Kaiyata, Padamanjari, &c.

If reciprocation, as above explained, were meant to be indicated in the text of Manu (§ 19.), the word bhratri "brother" would have been used, inflected, however, in the dual number to denote 'brother and sister' (Panini, 1. 2 68.); or else 'children,' or some generic term, would have been employed in the plural (Panini, 1. 2. 64) But the text is not so expressed. Consequently reciprocation is not indicated. Subodhini and Balam-bhatta.

* Yajnavalkya, 2. 118. Vide supra. C. 1. Sect. 3. § 12.
† Manu, 9. 192.

but the conjunctive particle (cha) is here very properly used with reference to the person making the partition ; as in the example, Devadutta practises agriculture, and so does Yajnadatta.

21. No deduction for the eldest brother.

The whole blood excludes the half blood.

21. "Equally" is specified (§ 19) to forbid the allotment of deductions [to the eldest and so forth.] The whole blood is mentioned to exclude the half blood.

22 The step-daughter may inherit, if she be of a superior tribe.

So Manu declares

22. But, though springing from a different mother, the daughter of a rival wife, being superior by class, shall take the property of a childless woman who belongs to an inferior tribe. Or, on failure of the step-daughter, her issue shall succeed. So Manu declares: "The wealth of a woman, which has been in any manner given to her by her father, let the Brahmani damsel take ; or let it belong to her offspring"*

23. This intends any superior tribe

23. The mention of a Brahmani includes any superior class. Hence the daughter of a Kshatriya wife takes the goods of a childless Vaisya · [and the daughter of a Brahmani, Kshatriya or Vaisya inherits the property of a Sudra.†]

24. After sons, grandsons inherit.

24. On failure of sons, grandsons inherit their paternal grand-mother's wealth. For Gautama says, "They who share the inheritance, must pay the debts :"‡ and the grandsons are bound to discharge the debts of their paternal grandmother; for the text expresses "Debts must be paid by sons and son's son."§

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The conjunctive particle is here very properly used.] 'It is employed in one of the acceptations, which do not admit of nouns coalescing in a compound term : namely in that of superaddition, as in the example which follows. 'D. practises agriculture, and so does Y.' 'Brothers share equally ; so do sisters.'

With reference to the person making the partition.] 'Another reading of this passage is noticed in the commentary of Balam-bhatta : "with the import of superaddition relatively to the person who makes the partition ;" vibhaga-kartitven'anvachayen'api, instead of vibhaga-kartiv'anvayen'api.

23. Hence the daughter of a Kshatriya wife takes the goods of a childless Vaisya.] This inference is contested by Srikrishna in his commentary on the Dayabhaga of Jimuta-vahana.

24 The grandsons are bound to discharge the debts.] 'Since one text declares them liable for the debts; and the other provides, that the debts shall be paid by those who share the inheritence ; it follows, that they share the heritage. Subodhini, &c.

* Manu, 9. 198.

† Subodhini and Balam-bhatta.

‡ Gautama, 12. 13.

§ Yajnavalkya, 2. 50.

25. Next the husband and other heirs, as above mentioned.

25 On failure of grandsons also, the husband and other relatives abovementioned* are successors to the wealth.

26. A passage of Yajnavalkya concerning an affianced damsel.

26. On occasion of treating of woman's property, the author adds something concerning a betrothed :

"For detaining a damsel, after affiancing her, the offender should be fined, and should also make good the expenditure together with interest."†

27. Interpretation of the text. One, who betroths a damsel and afterwards retracts the engagement without cause, shall be fined.

27. One, who has verbally given a damsel [in marriage] but retracts the gift, must be fined by the king, in proportion to [the amount of] the property or [the magnitude of] the offence ; and according to [the rank of the parties, their qualities,‡ and] other circumstances. This is applicable, if there be no sufficient motive for retracting the engagement. But, if there be good cause, he shall not be fined, since retraction is authorized in such a case "The damsel, though betrothed, may be withheld, if a preferable suitor present himself."§

The expenses incurred must be made good.

28. Whatever has been expended, on account of the espousals, by the [intended] bridegroom, [or by his father, or guardian,‖] for the gratification of his own or of the damsel's relations, must be repaid in full, with interest, by the affiancer to the bridegroom.

29. If the betrothed damsel die, the bridegroom's presents are returned to him; as directed by Yajnavalkya.

29. Should a damsel, any how affianced, die before the completion of the marriage, what is to be done in that case ? The author replies :

"If she die [after troth plighted,] let the bridegroom take back the gifts which he had presented ; paying however the charges on on both sides."¶

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29. Any how affianced.] By a religious rite, or by taking of hands, or in any other manner. Balam-bhatta

* § 9—11.

† Yajnavalkya, 2. 147.

‡ Balam-bhatta.

§ Yajnavalkya, 1. 165.

‖ Balam-bhatta.

¶ Yajnavalkya, 2. 147.

30. Exposition of the text.

30. If a betrothed damsel die, the bridegroom shall take the rings and other presents, or the nuptial gratuity, which had been previously given by him [to the bride,] "paying however the charges on both sides :" that is, clearing or discharging the expense which has been incurred both by the person who gave the damsel and by himself, he may take the residue. But her uterine brothers shall have the ornaments for the head, and other gifts, which may have been presented to the maiden by her maternal grandfather,[or her paternal uncle,*] or other relations ; as well as the property, which may have been regularly inherited by her. For Baudhayana says : "The wealth of a deceased damsel, let the uterine brethren themselves take On failure of them, it shall belong to the mother ; or, if she be dead, to the father."†

31. A husband, in distress, using his wife's property, is not liable to make it good.

31. It has been declared, that the property of a woman leaving no issue, goes to her husband. The author now shows, that, in certain circumstances, a husband is allowed to take his wife's goods in her life-time, and although she have issue :

" A husband is not liable to make good the property of his wife taken by him in a famine, or for the performance of a duty, or during illness, or while under restraint."

32. Explanation of the passage

32. In a famine, for the preservation of the family, or at a time when a religious duty must indispensably be performed, or in illness, or " during restraint " or confinement in prison or under corporal penalties, the husband, being destitute of other funds and therefore taking his wife's property, is not liable to restore it. But, if he seize it in any other manner [or under other circumstances,] he must make it good.

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30. Clearing or discharging.] The common reading of the passage is viganya "accounting," but Balam-bhatta rejects that reading, and substitutes vigamya " removing " or 'discharging.'

He may take the residue.] The meaning is this : after deducting from the damsel's property, the amount which has been expended by the giver or acceptor of the maid, or by their fathers or other relations on both sides, in contemplation of the marriage, let the residue be delivered to the bridegroom. Subodhini.

32. Is not liable to restore it.] He is not positively required to make it good. Balam-bhatta.

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* Balam-bhatta.

† Yajnavalkya, 2 148.

33. No other person, but her husband, may take her property. Narada and Manu denounce punishment against the offender.

33. The property of a woman must not be taken in her life-time by any other kinsman or heir but her husband : since punishment is denounced against such conduct : ("Their kinsmen, who take their goods in their life-time, a virtuous king should chastise by inflicting the punishment of theft :"*) and it is pronounced an offence ; "such ornaments, as are worn by women during the life of their husband, the heirs of the husband shall not divide among themselves : they, who do so, are degraded from their tribe."†(a)

34. A present on occasion of a second marriage described by Yajnavalkya.

34 A present made on her husband's marriage to another wife has been mentioned as a woman's property (§ 1.) The author describes such a present :

"To a woman, whose husband marries a second wife, let him give an equal sum, [as a compensation] for the supersession, provided no separate property have been bestowed on her · but, if any have been assigned, let him allot half "‡

35. Interpretation of the text

35. She is said to be superseded, over whom a marriage is contracted. To a wife so superseded, as much should be given on account of the supersession, as is expended [in jewels and ornaments, or the like,§] for the second marriage provided separate property had not been previously given to her by her husband ; or by her father-in-law. But, if such property had been already bestowed on her, half the sum expended on the second marriage should be given Here the word 'half' (arddha) does not intend an exact moiety So much therefore should be paid, as will make the wealth, already conferred on her, equal to the prescribed amount of compensation. Such is the meaning.

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35. Here the word half does not intend an exact moiety] The term, as is stands in the original text, is not neuter, that it should signify an equal part or exact moiety . but it is masculine and signifies portion in general. (Amara 1. 1. 2. 17) Subodhini.

Balam-bhatta, citing a passage of the Mahabhashya to prove that arddha in the masculine signifies half , interprets the quotation from the *Amara-Kosha (1. 1. 2 17.)* as exhibiting arddha, masculine and neuter, in the sense of moiety. He therefore rejects the foregoing explanation, and considers the word 'half' as employed in the text for an indefinite sense.

* Narada, as cited by Balam-bhatta ; but not found in his institutes.
† Manu, 9 200. Vide supra. C. 1. Sect. 4. § 19.
‡ Yajnavalkya, 2. 149. § Balam-bhatta.

(a) 'Become outcastes' would be more correct than 'degraded from their tribe.

SECTION XII.

On the Evidence of a Partition.

1. Yajnavalkya specifies the evidence of partition if doubted.

1. Having thus explained partition of heritage, the author next propounds the evidence by which it may be proved in a case of doubt

"When partition is denied, the fact of it may be ascertained by the evidence of kinsmen, relatives and witnesses, and by written proof, or by separate possession of house or field."*

2 Explanation of the text.

2. If partition be denied or disputed, the fact may be known and certainty be obtained by the testimony of kinsmen, relatives of the father or of the mother, such as maternal uncles and the rest, being competent witnesses as before described ;† or by the evidence of a writing, or record of the partition. It may also be ascertained by separate or unmixed house and field.

3 Other proofs of separation are stated by Narada

3. The practice of agriculture or other business pursued apart from the rest, and the observance of the five great sacraments‡ and other religious duties perfomed separately from them, are pronounced by Narada to be tokens of a partition. "If a question arise among co-heirs in regard to the fact of partition, it must be ascertained by the evidence of kinsmen, by the record of the distribution, or by separate transaction of affairs. The religious duty of unseparated brethern is single. When partition indeed has been made, religious duties become separate for each of them "§

4. And again in a subsequent passage.

4. Other signs of previous separation are specified by the same author : "Separated not unseparated brethern may reciprocally bear testimony, become sureties, bestow gifts, and accept presents."‖

This finishes the subject of the partition of heritage(*a*).

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2 "By the testimony of kinsmen."] Or rather strangers belonging to the same tribe with the parties Balam-bhatta.

3. "By the record of the distribution "] Another reading is noticed by Balam-bhatta "by occupancy or by a writing ;" bhoga-lechbhyena instead of bhaga-lechhbyena See Jimuta-vahana, C. 14. § 1.

* Yajnavalkya, 2. 150. † In the preceding book on Evidence.

‡ Manu, 3 69. § Narada, 13.—36 37. ‖ Narada, 13. 39.

(*a*) Added by me.—Ed.

COMMENTARY ON YAJNAVALKYA ADHYAYA 2 V. 267.

If among partners one who had gone abroad is dead, his share) (is taken by) a Dayada (*i.e.*,) descendants beginning with the son (and) by Bandhavas *i.e.*, relations on the mother's side beginning with the mother's brother. Or the Jnatis *i.e.*, Sapindas other than the descendants (take). Failing them *i.e.*, in default of heirs beginning with the Dayadas, the King takes. By 'वा' *i.e.*, 'or' the alternative right of the Dayadas is shown. The rule of relative right as shown by the text, 'the lawfully wedded wife and the daughters also &c.' (Yajnavalkya II. 137) is applicable here also The necessity for this text is to exclude the pupil, the fellow student and the Brahmin and to include the partner (among heirs). Among trading partners, he alone takes who is capable of giving the Pinda and paying the debts. When there is no difference in capacity, all the partners take In their default, after waiting for the Dayadas for ten years, the King himself takes. This has been clearly laid down by Narada.*

PART I CH. III SEC V COMMENTARY ON YAJNAVALKYA II. 27 (a)

7. This has been clearly laid down by *Katyayana*: "In cases falling within the memory of man, possession with a title is admitted as evidence of landed property. In cases extending beyond the memory of man, the hereditary succession of three ancestors is admitted even without a title."†

8. The period of one hundred years is defined to be within the memory of man, from the text, "The age of man extends to one hundred years" ‡ "Even without a title:" that is to say, where there is no certainty of the non-existence of a title inferrible from its non-production. Therefore possession for upwards of one hundred years, hereditary, uninterrupted, and falling under the observation of the adverse party, confers a right, as it forms a presumption of, from its conformity with, a title §

* Translated by me. ED

(a) Translated by Sir W. H. Macnaghten.

† *Vivadatandava* and *Smritichandrika*

‡ *Vivadatandava*

§ Quia vero tempus memorium excedens quasi infinitum est memoraliter, ideo ejus temporis silentium ad rei delicturæ conjecturam semper sufficere videbitur, nisi validissimæ sint in contrarium rationes. Bene autem notandam est a prodentioribus juris consultis non plane idem esse tempus memoriam excedens cum centenario quanquam sæpe hæc non longe abeunt, quia communis humanæ vitæ terminus sunt anni centum, quod spatium ferme solet ætatis hominum aut *geneas*tres efficere, quas Antiocho Romani objiceibant, cum ostenderent repeti ab eo urbes quas ipse pater, avus nonquam usurpassent.—*Grotius Lib.* 2, Cap. iv. 7.

PART I CH. VI SEC. I. (*a*)

"Or, all must pay their creditors, of whatever caste whatever interest has been stipulated to be paid" (*b*).

9. "All," that is borrowers of every caste, Brahmin, &c, should pay to all classes of creditors the stipulated rate of interest, that is, the rate agreed to be paid, whether the loan is secured by a pledge or otherwise.

10. Sometimes interest is payable without any stipulation, as *Narada* says—"There shall be no interest, without a special agreement on what is lent through affection; but even where there is no such agreement interest will run, after the expiration of six months from the date of the loan."

11. Of a person, who having borrowed a thing from another merely for use, goes to a foreign country, *Katyayana* says—"He, who having received a thing (lent for use), goes to a foreign country without restoring it, must pay interest after a year."

12. When a person who has borrowed a thing from another merely for use, does not restore it on demand, but goes away to a foreign country, with reference to such a person, he (*Katyayana*) declares—"Though a loan is contracted expressly without interest, yet, if the debtor does not pay it after demand, but goes away to another country, the principal shall carry interest after the lapse of three months."

13. If a person, remaining in his native country, does not return the thing borrowed after demand, the king ought to compel him to pay interest from the date of such demand. Thus it is said—"A debtor, who, though living in his own country, does not pay the debt whenever the demand is made upon him, shall be forced, against his will, to pay interest on it, even if there were no stipulation for the payment of interest.

14. There is an exception to the rule relating to unstipulated interest which is thus declared by *Narada*—"The price of a comodity, wages, a deposit, a fine imposed, a gift without consideration, and a stake in a game, carry no interest, unless stipulated," "unless stipulated," that is, unless there is a special agreement. * *

20. The rule in question applies to (the case of) a single advance, the whole of which is realizable at once. If the amount is realized from one person and advanced to another and thereby renewed, or if the transaction is renewed with the same person more than once, then the interest

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(*a*) The translation of Part I Ch. VI. is of Grish Chunder Tarkalankara. (*b*) Yajnavalkya II. 37*a*.

on gold &c. will exceed double, &c., and increase as before. Also in the case of a single advance on which interest is received daily, monthly or yearly, even if the amount thus received (on different occasions) exceed the double, (the interest will not) cease to run. Since in this case there is no possibility of tho (interest) due from the debtor becoming double. So says *Manu*—"The interest of the principal, advanced by a single loan, does not exceed twice (the principal)." There is also another reading *realized* in one lump.* The interest does not exceed twice, if the amount of the principal is advanced by one single loan. But if the advance is realized from one person, and then lent to another or renewed in any other manner, interest may exceed twice the principal. The reading "realized, &c.," should be explained thus, if the interest is gradually collected from debtor, that is, daily, monthly, or yearly, then it may exceed twice the principal. It is likewise said by *Gautama*—"The loan, if allowed to remain (unpaid) for a long time, becomes double." Here the term loan being used in the singular number, it is to be understood that when a renewal of it takes place, then the interest may exceed double (the amount of the principal.) By the mention of the words "long time" it is implied that if the interest is collected gradually, it may exceed double (the amount of the loan.)

PART I CH. VI SEC. III.

Debts payable by Whom and When.

1. The author next expounds the topic as to what debts should be paid, when and by whom ?

"A debt incurred by undivided kinsmen on account of the family shall be discharged by their heirs, should they die or leave the country" *(a)*.

2. If undivided kinsmen, or any of them contract a debt for the support of the family, the other co-parcener is bound to pay it. If he dies or remains long in a foreign country, his heirs must pay. * *

5. That the debt shall be paid by the son and the grandson will be expounded hereafter. But the exceptions are declared beforehand.

* In the original text of *Manu*, the word *Kusida* is used. The author has explained it thus. A thing invested for increase, it is (called) *Kusida*, principal. Its increase is called interest of the principal.

(*a*) Yajnavalkya II. 45.

"A son is not bound to pay, in this world, his father's debts if they are incurred for spirituous liquor, or for gratification of lust, or in gambling, nor is he bound to pay any unpaid fines or tolls ; or idle gifts" *(a)*.

6. A debt incurred on account of drinking spirituous liquors, or (a debt) incurred under the influence of lust, that is to say, for the sake of enjoying a woman, as well as debt caused by gambling, and what remains due as the balance of a fine or toll, as well as idle gifts promised to imposter, to bards, wrestlers and the like, for it is declared in *Smriti*— "Fruitless is a present given to an imposter, a bard, a wrestler, a quack, a flatterer, a knave, a fortune-teller, a spy or robber," such debts, (as enumerated above) incurred by the father, the son, &c. are not bound to pay to the wine-sellers and the rest. Here (in the text) by the use of the words "unpaid fines or tolls," it is not to be understood that when the whole of a fine or toll is due, it is required to be paid. (For) it is declared in the *Smriti* of *Ushana*, "A fine or its balance, a toll or its balance, and what is not necessary (for life),* are not required to be paid by the son." *Gautama* has also said—"The debt incurred on account of spirituous liquors, or toll, or gambling, or fine is not required to be paid by sons." The purport of this text is that all such (debts) do not fall on the son. Thus the debts which should not be paid, have been enumerated.

"If a father has gone abroad, or died, or is subdued by calamity, his debt shall be paid by his sons and grandsons ; on their denial, the debt must be proved by witnesses" *(b)* * *

14 If the father, without paying a debt which is due-dies or goes to a distant country, or is afflicted with an in, curable disease &c., then his debts must be paid by his son and grandson (son's son) by reason of their sonship and grandsonship, even if no assets of the father or of the grand-father have been left. (The liability will be) in this order. In default of father, the son, and in default of son, the son's son (must pay.) In case of denial by the son or son's son, the debt being proved by the testimony of witnesses &c., must be paid by them.

15. By the text "If a father has gone abroad" the payment merely is enjoined, but the specific time (for payment) as declared by *Narada* is to be observed. "The father or, (if the family be undivided) the uncle or the elder brother

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(a) Yajnavalkya II. 47.

(b) Yajnavalkya II. 50.

* The word is Vyavaharika which has received judicial interpretation. The above translation is not correct.

having gone abroad, the son shall not be forced to discharge the debt until twenty years have elapsed. * *

16. If the father be dead, the son if a minor need not pay, but if a major, he is (bound) to pay. The period of majority has been also stated by him (*Narada.*) "A boy, up to the eighth year, is considered like a child in the womb, and up to the sixteenth year he is *Bala* (minor) and also termed *Pouganda* ; after this period he is major, and becomes independent if (his) father and mother are not alive.' Although a minor becomes independent after his father's death, he is not bound to pay the debt (of his father) as it declared "A minor, even if independent, is not required to pay the debt ; since a major alone is truly independent, and majority depends on qualification and age. * *

19. In the text (II. 50) although it is indiscriminately said that "his debt shall be paid by his sons, or sons' sons," still the distinction is to be observed that as the father pays (the debt) with interest, so the son shall pay it, but the grandson (sons son) shall pay the principal only, and not interest. This is declared in the text of *Vrihaspati*—"The sons must pay the debt of their father, when proved, as if it were their own, the son's son must pay the debt of his grandfather to an equal amount, and his son, (or the great grandson) shall not be compelled to pay it at all." Here the term "when proved" is mentioned without any specification, and in the text (II. 50) the words "proved by witnesses" occur. These two indicate that it is to be proved by evidence (in general.) "Equal amount" means an amount equal to the principal; this amount only is required to be paid, and not the interest. "His son," the grandson's son, shall not be forced to pay, if he has not got any assets. This will be clearly declared in the next (to be quoted from the author.)

20. The debtor, his son, and grandson, these three are said to be the proper persons to discharge the debt ; and the order (of their liability) also, when all of them are present, has been shewn. Now the author expounds the order, (of liability) amongst other persons who are bound to pay (the debt)

CH. VI. SEC. IV.

"If a surety for appearance or for confidence die-the sons have not to pay; in the case of a surety for payment the sons have to pay" *(a)*.

9. If the surety for appearance or that for confidence is dead, their sons need not pay their father's debt incurred on account of (such) suretyship; but if the person, who binds himself for the payment departs this world, his sons must pay, but not his grandsons.

10. They (sons) ought to pay the principal, but not the interest, according to the text of *Vyasa* "The son of a son shall (in general) pay the debt of his grandfather, but the son (only) shall pay rhe debt of his father incurred by his becoming a surety, (and both of them) without interest; but it is clearly settled that their sons are not bound to pay." (The meaning is that,) the grandson must pay the exact amount of his grandfather's debt other than that incurred for his becoming surety, and not the interest. Likewise the son shall pay an amount equal to his father's debt incurred by his becoming security, without any interest. "Their sons," means sons of a grandson and son, *i.e.*, the regat-grandson and grandson, if they do not inherit any property, need not respectively pay the general debt and the debt incurred by becoming surety.

11. "Should the debtor be insolvent, and the surety have assets the principal only must be paid, and it is required to pay the interest." This *Smriti* is to be explained thus—If a surety dies possessed of assets, then his son shall pay only the principal but not the interest.

12. If the surety for appearance or for confidence binds himself after taking sufficient pledge, then his sons also must pay the debt incurred by becoming surety, from the property taken in pledge. As *Katyayana* declares,—"Should a man become surety for the appearance of a debtor from whom he had received a pledge (as his own security) his son, on the demise of his father, may be compelled to pay the debt from the pledge property." Here security for appearance includes a security confidence. "Demise of father" means when the father is dead or gone to a distant country.

CH. IX. SEC. I.

XC. "A debt specified in writing must be paid by three persons alone." (Yajnavalkya II. 90)

(a) Yajnavalkya II. 55.

10. *a.* As in the case of a debt contracted in the presence of witnesses, it must be paid by three persons, so in the case of a bonded debt, it must be paid by the obligor, his son and grandson, but not by the fourth in descent, or those after him. This is ordained.

11. Should it be objected, that a text has already declared *universally: "By sons and grandsons, a debt must be discharged." By which it is already provided, that a debt must be paid by three persons*, it is admitted, but the above text has been propounded to preclude the supposition, that in the case of bonded debts, there is, in another text, any exception to the precept. Thus, having treated of the nature of a bond, it has been declared by Katyayana. "Such contracted by the ancestors must be discharged after the lapse of time." Such alludes to the bonded debts. The debts of the ancestors must be discharged by their representatives, even though a long time may have elapsed. Here by the use of the plural number "ancestors," and the mention of the lapse of time, it might be inferred that the debts must be discharged by the fourth in descent, and those after them. Moreover, the text of Hareeta, "He will obtain payment who holds a bond." Here also it might be inferred, from the general mention respecting the payment of the debt to any person holding a bond, that by the fourth in descent, and those after them, payment should be made. To obviate such a supposition, the above text has been properly recited. The two last mentioned texts must be reconciled to the injunction of Yogeeshwara.

12. He states an exception.

XCA. "A pledge may be enjoyed until the debt is repaid" Yajnavalkya II. 90)

12 *a.* "This text has been recited, lest it should be supposed, from the number being limited to three that, in the case of a bonded debt accompanied by a pledge, he who is exempt from the payment is also not entitled to redeem the pledge; and it implies that until the debt is discharged by the fourth or fifth in descent, the pledge may be enjoyed; it follows, that the fourth, of those after him in descent, are entitled to adjust a debt accompanied by a pledge. Should it be objected that this exception is superfluous from the occurrence of a former text, "An usufructuary pledge is not forfeited, it is replied, that were it not for this exception, that text might be considered to extend to three only All this is irrefragable.* * *

Gift consists in the relinquishment of one's own right and the creation of the righth of another. The creation of the right of another person is completed on that others acceptance of the gift and not otherwise. Acceptace is made by three things, mental, verbal or corporal. Portion of the commentary on Yajnavalkya II. 28.

MITAKSHARA ON YAJNAVALKYA ADHYAYA I. V. 52 ACHARKANDA.

"(He should marry a girl, who is non-Sapinda with himself). She is called his Sapinda who has (particles of) the body (of some ancestors, &c) in common (with him). Non-Sapinda means not his Sapinda. Such a one (he should marry). Sapinda-relationship arises between two people through their being connected by particles of one body. Thus the son stands in Sapinda-relationship to his father because of particles of his father's body having entered (his). In like (manner stands the grandson in Sapinda-relationship) to his paternal grandfather and the rest, because through his father particles of his (grand-father's) body have entered into (his own). Just so is (the son a Sapinda-relation) of his mother, because particls of his mother's body have entered (into his). Likewise (the grandson stands in Sapinda-relationship) to his maternal grandfather and the rest through his mother. So also (is the nephew) a Sapinda-relation of his maternal aunts and uncles, and the test, because particles of the same body (the paternal grandfather) have entered into (his and theirs); likewise (does he stand in Sapinda-relationship) with paternal uncles and aunts, and the rest *So also the wife and the husband (are Sapinda-relations to each other), because they together begot one body (the son. In like manner brother's wives also are (Sapinda-relations to each other), because they produce one body (the son),* with those (severally) who have sprung from one body (i e., because they bring forth sons by their union with the offspring of one person. and thus their husbands' father is the common bond which connects them)*. Therefore one ought to know that, wherever the word Sapinda is used, there exists (between the persons to whom it is applied) a connection with one body, either immediately or by descent" (*a*).

MITAKSHARA ON YAJNAVALKYA ADHYAYA I. V. 53.

"In the explanation of the word 'aspindam' (non-Sapinda, verse 52), it has been said that Sapinda-relation arises

(a) The translation is of West and Buhler which has been adopted in 2 B. L. R. 33 and 42 Cal. 384 P. C. and 7 I. A. 212.

The portion in Italics is not correctly translated. It should be :—

"Similarly of the husband with the wife because they are one body (according to law); similarly also of the wives of brothers because they are one body (with their husbands) and are thus of one body with those who are of one body (with their husbands)." There is a passage to the same effect in the Parasara Madhava.

from the circumstance that particles of one body have entered into (the bodies of the persons thus related) either immediately or through (transmission by) descent. But inasmuch as (this definition) would be too wide, since such a relationship exists in the eternal circle of births in some manner or other, between all men, therefore the author (Yajnavalkya) says :—

Vs. 53. (He should marry a girl.) "After the fifth ancestor on the mother's and after the seventh on the father's side,"—On the mother's side, in the mother's line after the fifth, on the father's side, in the father's line, after the seventh (ancestor), the Sapinda-relation ceases; these latter two words must be understood; therefore the word Sapinda, which on account of its (etymological) import, '(connected by having in common) particles (of one body)' would apply to all men, is restricted in its signification, just as the word *pankaja* (which etymologically means "growing in the mud," and therefore would apply to all plants growing in the mud, designates the the lotus only) and the like; and thus the six ascendants, beginning with the father, and the six descendants, beginning with the son, and one's self (counted) as the seventh (in each case, are Sapinda-relations. In case of a division of the line also, one ought to count including him from whom the division of the line begins, *e.g.*, two collaterals, *A* and *B* are Sapinda, if the common ancestor is not further removed from either of them than six degrees, and thus must the counting of the (Sapinda-relationship) be made in every case.

Similarly, beginning with the mother counting her father and grand-father, the girl who is fifth from them is considered fifth from the mother Likewise beginning with the father, counting his father (and his ancestors) the girl who is seventh from them is called seventh from the father. Thus also of two sisters, of sister and brother, of brother's daughter and paternal uncle, in marriage by reason the descent of two from a common ancestor, there is no separation of body."

मिताक्षरा ।

श्रीपद्मनाभभट्टोपाध्यायात्मजस्य श्रीमत्परमहंसपरिव्राजक विज्ञानेश्वरभट्टारककृतौ ऋजुमिताक्षरायां याज्ञवल्क्य धर्म्मशास्त्रविवृतौ रिक्थविभागप्रकरणम् ।

प्रमाणं मानुषं दैवमिति भेदेन वर्णितम् ।
अधुना वर्ण्यते दायविभागो योगमूर्त्तिना ॥ ११४

तत्र दायशब्देन यद्धनं स्वामिसंबन्धादेव निमित्तादन्यस्य स्वम्भवति तदुच्यते। स च द्विविधः अप्रतिबन्धः सप्रतिबन्धश्च, तत्र पुत्राणां पौत्राणां च पुत्रत्वेन पौत्रत्वेन च पितृधनं पितामहधनं च स्वम्भवतीत्यप्रतिबन्धो दायः, पितृव्यभ्रात्रादीनां तु पुत्राभावे स्वाम्यभावे च स्वम्भवतीति पुत्रसद्भावः स्वामिसद्भावश्च प्रतिबन्धस्तदभावे पितृव्यत्वेन च भ्रातृत्वेन च स्वम्भवतीति सप्रतिबन्धो दायः एवं तत्पुत्रादिष्वप्यूहनीयः। विभागोनाम द्रव्यसमुदायविषयाणामनेकस्वाम्यानां तदेकदेशेषु व्यवस्थापनं, एतदेवाभिप्रेत्योक्तं नारदेन विभागोऽर्थस्य पैत्रस्य तनयैर्यत्र कल्प्यते दायभाग इति प्रोक्तं दायभागपदं बुधैरिति। पैत्रस्येति स्वत्वनिमित्तसम्बन्धोपलक्षणम्, तनयैरित्यपि प्रत्यासन्नोपलक्षणं इदमिह निरूपणीयम्। कस्मिन् काले कस्य कथं कैश्च विभागः कर्त्तव्यइति। तत्र कस्मिन् काले कथं कैश्चेति तत्र तत्र श्लोकव्याख्यान एव वक्ष्यते। कस्यविभाग इति एतदिह चिन्त्यते। किं विभागात् स्वत्वमुत स्वस्य सतोविभाग इति। तत्र स्वत्वमेव तावन्निरूप्यते, किं शास्त्रैकसमधिगम्यं स्वत्वमुत प्रमाणान्तरसमधिगम्यमिति। तत्र शास्त्रैकसमधिगम्यमिति तावद्युक्तं गौतमवचनात्। स्वामी रिक्थक्रयसंविभाग-परिग्रहाधिगमेषु ब्राह्मणस्याधिकं लब्धं क्षत्रियस्य विजितं निर्व्विष्टंवैश्यशूद्रयोरिति प्रमाणान्तरगम्येस्वत्वे नेदं वचनमर्थवत् स्यात्। तथा स्तेनातिदेशे मनुः योदत्ता दायिनो हस्तात्लिप्सेत ब्राह्मणोधनम्, याजनाध्यापनाद्वापि यथास्तेन तथैव स इति। अदत्तादायिनः सकाशात् याजनादिद्वारेण द्रव्यमर्ज्जयतां दण्डविधानमुपपन्नं स्यात् स्वत्वस्यलौकिकत्वे अपिच लौकिकं चेत् स्वत्वं मम स्वमनेनापहृतमिति न ब्रूयात् अपहर्त्तुरेव स्वत्वात् अथान्यस्यस्वन्तेनापहृतमिति। नापहर्त्तुः स्वम् एवं तर्हि सुवर्णं रजतादिस्वरूपवदस्य वा स्वस्य वा स्वमिति संशयो स्यात् तस्माच्छास्त्रैक समधिगम्यं स्वत्वमिति। अत्रोच्यते लौकिकमेव स्वत्वं

व्रीह्यादिवत् आहवनीयादीनां हि शास्त्रगम्यानां लौकिकक्रियासाधनत्वमस्ति। नन्वाहवनीयादीनामपि पाकादिसाधनत्वमस्त्येव नैतत् नहि तत्राहवनीयादिरूपेण पाकादिसाधनत्वं। किं तर्हि प्रत्यक्षादिपरिदृश्यमानाग्न्यादिरूपेण इह तु सुवर्णादिरूपेण न क्रियादिसाधनत्वमपि तु स्वत्वेनैव। न हि यस्य यत्स्वं भवति तत्तस्य क्रयाद्यर्थक्रियां साधयति, अपिच प्रत्यन्तवासिनामप्यदृष्टशास्त्रव्यवहाराणां स्वत्वव्यवहारो दृश्यते क्रयविक्रयादिदर्शनात्। किञ्च नियतोपायकं स्वत्वं लोकसिद्धमेवेति न्यायविदो मन्यन्ते तथाहि लिप्सासूत्रे तृतीये वर्णके द्रव्यार्ज्जननियमानां क्रत्वर्थत्वे स्वत्वमेव न स्यात्, स्वत्वस्य लौकिकत्वादिति पूर्व्वपक्षासम्भावमाशङ्क्य द्रव्यार्ज्जनस्य प्रतिग्रहादिना स्वत्वसाधनत्वं लौकिकसिद्धमिति पूर्व्वपक्षः समर्थितो गुरुणा। ननु च द्रव्यार्ज्जनस्य क्रत्वर्थत्वे स्वत्वमेव न भवतीति याग एव न सम्बर्त्तेत। प्रलपितमिदं केनापि अर्ज्जनं स्वत्वं नापादयतीति विप्रतिषिद्धमिति वदता तथा सिद्धान्तेऽपि स्वत्वस्य, लौकिकत्वमङ्गी-कृत्यैव विचारप्रयोगजनमुक्तम्। अतो नियमातिक्रमः पुरुषस्य न क्रतोरिति अस्यचार्थ एवं विवृतः। यदा द्रव्यार्ज्जननियमानां क्रत्वर्थत्वं तदा नियमार्ज्जितेनैव द्रव्येण क्रतुसिद्धिः, नियमातिक्रमार्ज्जितेन द्रव्येण न क्रतुसिद्धिरिति न पुरुषस्यैव नियमाति-क्रमदोषः पूर्व्वपक्षे सिद्धान्ते तु अर्ज्जननियमस्य पुरुषार्थत्वात्तदतिक्रमेणार्ज्जितेनापि द्रव्येण क्रतुसिद्धिर्भवति पुरुषस्यैव नियमातिक्रमदोष इति नियमातिक्रमार्ज्जितस्यापि स्वत्वमङ्गीकृतम्, अन्यथा क्रतुसिद्ध्यभावात् न चैतावता चौर्य्यादिप्राप्तस्यापि स्वत्वं स्यादिति मन्तव्यम् लोके तत्र स्वत्वप्रसिद्ध्यभावात्, व्यवहारविसम्वादात् एवं प्रति-ग्रहाद्युपायकेस्वत्वे लौकिके स्थिते ब्राह्मणस्य प्रतिग्रहादय उपायाः क्षत्रियस्य विजिता-दयो वैश्यस्य कृष्यादयः शूद्रस्य शुश्रूषादय इत्यदृष्टार्थनियमाः रिक्थादयस्तु सर्व्व-साधारणाः। स्वामी रिक्थक्रयसंविभागपरिग्रहाधिगमेष्वित्युक्ताः। तत्राप्रतिबन्धोदायो रिक्थं क्रयः प्रसिद्धः संविभागः सप्रतिबन्धोदायः प्रतिग्रहोऽनन्यपूर्व्वस्य जलतृण-काष्ठादेः स्वीकारः अधिगमोनिध्यादेः प्राप्तिः एतेषु निमित्तेषु सत्सु स्वामी भवति। एतेषु जायते स्वामी ब्राह्मणस्याधिकं लब्धमिति ब्राह्मणस्य प्रतिग्रहादिना लब्धं तदधिकमसाधारणं क्षत्रियस्य विजितमिति अधिकमित्यनुवर्त्तते क्षत्रियस्य विजय-दण्डादिलब्धमसाधारणम् निर्व्विष्टं वैश्यशूद्रयोरिति अत्राप्यधिकमित्यनुवर्त्तते वैश्यस्य कृषिगोरक्षादि लब्धं निर्व्विष्टं तदसाधारणम् शूद्रस्य द्विजशुश्रूषादिना भृतिरूपेण यल्लब्धं तदसाधारणं एवमनुलोमजानां प्रतिलोमजानाञ्च लोकप्रसिद्धेषु स्वत्वहेतुषु यद्यदसाधारणमुक्तं सूतानामश्वसारथ्यमित्यादि तत्तत्सर्व्वं निर्व्विष्टशब्देनोच्यते। सर्व्वस्यापि भृतिरूपत्वान्निर्व्वेशो भृतिभोगयोरिति त्रिकाण्डीस्मरणात् तत्तदसाधारणं

वेदितव्यम्। यदपि पत्नीदुहितरश्चेत्यादिस्मरणं तत्रापि स्वामिसम्बन्धितया बहुषु दायविभागितया प्राप्तेषु लोकप्रसिद्धेऽपि स्वत्वे व्यामोहनिवृत्त्यर्थं स्मरणमिति सर्व्वमनवद्यम्। यदपि मम स्वमनेनापहृतमिति न ब्रूयात् स्वत्वस्य लौकिकत्वे इति तदप्यसत् स्वत्वहेतुभूतक्रयादिसन्देहात् स्वत्वसन्देहोपपत्तेः विचारप्रयोजनं तु यद्गर्हितेनार्ज्जयन्ति कर्म्मणा ब्राह्मणा धनम् तस्योत्सर्गेण शुद्ध्यन्ति जप्येन तपसैव चेति। शास्त्रैकसमधिगम्ये स्वत्वे गर्हितेनासत्प्रतिग्रहवाणिज्यादिना लब्धस्य स्वत्वमेव नास्तीति तत्पुत्राणां तदविभाज्यमेव। यदा तु स्वत्वं लौकिकं तदाऽसत् प्रतिग्रहादिनालब्धस्यापि स्वत्वात् तत्पुत्राणां तद्विभाज्यमेव तस्योत्सर्गेण शुद्ध्यन्तीति प्रायश्चित्तमर्ज्जयितुरेव तत्पुत्राणान्तु दायत्वेन स्वत्वमिति न तेषां दोषसम्बन्धः। सप्तवित्तागमाधर्म्मादायोलाभः क्रयोजयः प्रयोगः कर्म्मयोगश्च सत्प्रतिग्रह एव चेति मनुस्मरणात्। इदानीमिदं सन्दिह्यते विभागात् स्वत्वमुत स्वस्य सतो विभाग इति तत्र विभागात् स्वत्वमिति तावद्युक्तम् जातपुत्रस्याधानविधानात् यदि जन्मनैव स्वत्वं स्यात्तदोत्पन्नस्यापि पुत्रस्य तत्स्वंसाधारणमिति द्रव्यसाध्येष्वाधानादिषु पितुरनधिकारः स्यात्। तथाविभागात् प्राक् पितृप्रसादो लब्धस्य विभागप्रतिषेधो नोपपद्यते सर्व्वानुमत्या दत्तत्वाद्विभागप्राप्त्यभावात् यथाह शौर्य्यभार्य्याधने चोभे यच्च विद्याधनं भवेत् त्रीण्येतान्यविभाज्यानि प्रसादो यश्च पैतृक इति। तथा भर्त्रा प्रीतेन यद्दत्तं स्त्रियै तस्मिन्मृतेऽपि तत् सा यथा काममश्नीयाद्दद्याद्वा स्थावराद्दृते इति प्रीतिदानवचनं नोपपद्यते तज्जन्मनैव स्वत्वेन च स्थावराद्दृते यद्दत्तमिति सम्बन्धोयुक्तो व्यवहितयोजनाप्रसङ्गात्। यदपि मणिमुक्ताप्रवालानां सर्व्वस्यैव पिता प्रभुः स्थावरस्य तु सर्व्वस्य न पिता न पितामहः। तथा पितृप्रसादाद्भुज्यन्ते वस्त्राण्याभरणानि च स्थावरं तु न भुज्येत प्रसादे सति पैतृके इति स्थावरस्य प्रसाददानप्रतिषेधवचनम्। तत्पितामहोपात्तस्थावरविषयम्। अतीते पितामहे तद्धनं पितापुत्रयोः साधारणमपि मणिमुक्तादि पितुरेव स्थावरं तु साधारणमित्यस्मादेव वचनादवगम्यते। तस्मान्न जन्मना स्वत्वं किन्तु स्वामिनाशाद्विभागाद्वा स्वत्वम् अतएव पितुरूर्द्ध्वं विभागात् प्राग्द्रव्यस्वत्वस्य प्रक्षीणत्वादन्येन गृह्यमाणं न निवार्य्यतेति चोद्यस्यानवकाशः। तथैकपुत्रस्यापि पितृप्रयाणादेव पुत्रस्य स्वमिति न विभागमपेक्षते इति अत्रोच्यते लोकप्रसिद्धमेव स्वत्वमित्युक्तम्। लोके च पुत्रादीनां जन्मनैव स्वत्वं प्रसिद्धतरम् नापह्नवमर्हति विभागशब्दश्च बहुस्वामिकधनविषयो लोके प्रसिद्धो नान्यदीयविषयो न प्रक्षीणविषयः तथोपपत्त्यैवार्थस्वामित्वंलभेतेत्याचार्य्या इति गौतमवचनात्। मणिमुक्ताप्रवालानामित्यादि वचनं च जन्मना स्वत्वपक्ष एवोपपद्यते न च पितामहोपात्तस्थावरविषयमिति युक्तम्, न पिता न

पितामह इति वचनात्। पितामहस्य हि स्वार्ज्जितमपि पुत्रे पौत्रे च सत्यदेयमिति वचनं जन्मना स्वत्वं गमयति यथा परमते मणिमुक्तावस्त्राभरणादीनां पैतामहानामपि पितुरेव स्वत्वं वचनात्। एवमस्मन्मतेपि पित्रार्ज्जितानामप्येतेषां पितुर्द्दानाधिकारी वचनादित्यविशेषत: यत्तु भर्त्राप्रीतेनेत्यादि विष्णुवचनं स्थावरस्य प्रीतिदानज्ञापनं तत् स्वोपार्ज्जितस्यापि पुत्राद्यभ्यनुज्ञयैवेति व्याख्येयम्। पूर्व्वोक्तैर्मणिमुक्तादिवचनै: स्थावरव्यतिरिक्तस्यैव प्रीतिदानयोग्यत्वनिश्चयात् यदप्यर्थसाध्येषु वैदिकेषु कर्म्मस्वनधिकार इति। तत्र तद्विधानबलादेवाधिकारो गम्यते, तस्मात् पैतृकपैतामहे च द्रव्ये जन्मनैव स्वत्वम् तथापि पितुरावश्यकेषु धर्म्मकृत्येषु वाचनिकेषु प्रसाददानकुटुम्बाभरणापद्विमोक्षादिषु च स्थावरव्यतिरिक्तद्रव्यविनियोगे स्वातन्त्र्यमिति स्थितम्। स्थावरेतु स्वार्ज्जिते पित्रादिप्राप्ते च पुत्रादिपारतन्त्र्यमेव। स्थावरं द्विपदं चैव यद्यपि स्वयमर्ज्जितम् असम्भूय सुतान् सर्व्वान्न दानं न च विक्रय:, ये जाता येऽप्यजाताश्च ये च गर्भे व्यवस्थिता: वृत्तिं च तेऽभिकाङ्क्षन्ति न दानं न च विक्रय इत्यादि स्मरणात्। अस्यापवाद: एकोऽपि स्थावरे कुर्य्याद्दानाधमनविक्रयम् आपत् काले कुटुम्बार्थे धर्म्मार्थे च विशेषत इति। अस्यार्थ:। अप्राप्तव्यवहारेषु पुत्रेषु पौत्रेषु वा अनुज्ञादानादावसमर्थेषु भ्रातृषु वा तथाविधेष्वविभक्तेष्वपि सकलकुटुम्बव्यापिन्यामापदि तत्पोषणे चावश्यकर्त्तव्येषु पितृश्राद्धादिषु स्थावरस्य दानाधमनविक्रयमेकोपि समर्थ: कुर्य्यात् इति। यत्तु मनुवचनम् विभक्ता अविभक्ता वा सपिण्डा: स्थावरे समा: एकोह्यनीश: सर्व्वत्र दानाधमन विक्रय इति। तदप्यविभक्तेषु द्रव्यस्य मध्यगत्वादेकस्यानीश्वरत्वात् सर्व्वाभ्यनुज्ञावश्यं कार्य्या, विभक्तेषूत्तरकालं विभक्ताविभक्तसंशयव्युदासेन व्यवहारसौकर्य्याय सर्व्वाभ्यनुज्ञा न पुनरेकस्यानीश्वरत्वेनातो विभक्तानुमतिव्यतिरेकेणापि व्यवहार: सिध्यतीत्येवेति व्याख्येयम्। यदपि। स्वग्रामज्ञातिसामन्तदायादानुमतेन च हिरण्योदकदानेन षड्भिर्गच्छति मेदिनीति, तत्रापि ग्रामानुमति: प्रतिग्रह: प्रकाश: स्यात् स्थावरस्य विशेषत इति स्मरणात्, व्यवहारप्रकाशनार्थमेवापेक्ष्यते न पुनर्ग्रामानुमत्या विना व्यवहारासिद्धि:, सामन्तानुमतिस्तु सीमाविप्रतिपत्तिनिरासाय ज्ञातिदायादानुमतेस्तु प्रयोजनमुक्तमेव। हिरण्योदकदानेनेति स्थावरे विक्रयो नास्ति कुर्य्यादाधिमनुज्ञयेति स्थावरस्य विक्रयप्रतिषेधात्। भूमिं य: प्रतिगृह्णाति यश्च भूमिं प्रयच्छति, उभौ तौ पुण्यकर्म्माणौ नियतौ स्वर्गगामिनाविति दानप्रशंसावचनाच्च विक्रयेऽपि कर्त्तव्ये सहिरण्यमुदकं दानरूपेण स्थावरविक्रयं कुर्य्यादित्यर्थ:। पैतृके पैतामहे च धने जन्मनैव स्वत्वेपि विशेषं भूयो पितामहोपात्तेत्यत्र वक्ष्याम:॥ इदानीं यत्र च काले येन च यथा विभाग: कर्त्तव्यस्तद्दर्शयन्नाह—

विभागं चेत् पिता कुर्य्यादिच्छया विभजेत् सुतान्।
ज्येष्ठं वा श्रेष्ठभागेन सर्व्वे वा स्युः समांशिनः॥ ११५

यदा विभागं पिता चिकीर्षति तदा इच्छया विभजेत् पुत्रानात्मनः सकाशात् पुत्रं पुत्रौ पुत्रान् इच्छाया निरङ्कुशत्वादनियमप्राप्तौ नियमार्थमाह, ज्येष्ठं वा श्रेष्ठभागेनेति। ज्येष्ठं श्रेष्ठभागेन मध्यमं मध्यभागेन कनिष्ठं कनिष्ठभागेन विभजेदित्यनुवर्त्तते। श्रेष्ठादिविभागश्च मनुनोक्तः—ज्येष्ठस्य विंशउद्धारः सर्व्वद्रव्याच्च यद्वरम् ततोऽर्द्धं मध्यमस्य स्यात्तुरीयन्तु यवीयस इति। वा शब्दोवक्ष्यमाणपक्षापेक्षः। सर्व्वेवास्युः समांशिन इति। सर्व्वे वा ज्येष्ठादयः समांशभाजः कर्त्तव्याः; अयञ्च विषमोविभागः स्वार्ज्जितद्रव्यविषयः, पितृक्रमायाते तु समस्वाम्यस्य वक्ष्यमाणत्वान्नेच्छया विषमो विभागो युक्तः, विभागश्चेत् पिता कुर्य्यादिति। यदा पितुर्व्विभागेच्छा स तावदेकः कालः अपरोऽपि जीवत्यपि पितरि द्रव्यनिस्पृहे निवृत्तरमणे मातरि च निवृत्त रजस्कायां पितुरनिच्छायामपि पुत्रेच्छयेव विभागो भवति। यथोक्तं नारदेन, अत ऊर्द्ध्वं पितुः पुत्रा विभजेयुर्धनं सममिति पित्रोरूर्द्ध्वं विभागं प्रतिपाद्य मातुर्निवृत्ते रजसि प्रत्तासु भगिनीषुच निवृत्ते चापि रमणे पितर्य्युपरतस्पृहे इति दर्शितम्। अत्र पुत्राधनं सम विभजेयुरित्यनुषज्यते गौतमेनापि ऊर्द्ध्वं पितुः पुत्रारिक्थं भजेरन्नित्युक्त्वा निवृत्ते चापि रजसीतिद्वितीयः कालोदर्शितः। जीवतिचेच्छतीति तृतीयः तथा सरजस्कायामपि मातर्य्यनिच्छत्यपि पितर्य्यधर्म्मवर्त्तिनि दीर्घरोगग्रस्ते च पुत्राणामिच्छया भवति विभागः। यथाह शङ्खः—अकामे पितरि रिक्थविभागो वृद्धे विपरीतचेतसि रोगिणिचेति। पितुरिच्छया विभागो द्विधा दर्शितः समोविषमश्च॥ तत्र समविभागे विशेषमाह—

यदि कुर्य्यात् समानंशान् पत्न्यः कार्य्याः समांशिकाः।
न दत्तं स्त्रीधनं यासां भर्त्रा वा श्वशुरेण वा॥ ११६

यदा स्वेच्छया पिता सर्व्वानेव सुतान् समविभागिनः करोति तदा पत्न्यश्च पुत्रसमांशभाजः कर्त्तव्याः, यासां पत्नीनां भर्त्रा श्वशुरेणवा स्त्रीधनं न दत्तं दत्तेतु स्त्रीधने अर्द्धांशं वक्ष्यति दत्तेत्वर्द्धं प्रकल्पयेदिति। यदा तु श्रेष्ठभागादिना ज्येष्ठादीन् विभजति तदा पत्न्यः श्रेष्ठादिभागान्न लभन्ते किंतूद्धृतोद्धारात् समुदायात् समानेवांशान् लभन्ते स्वोद्धारञ्च यथाह्यापस्तम्बः परीभाण्डञ्च गृहे अलङ्कारोभार्य्याया इति॥ ज्येष्ठं वा श्रेष्ठभागेन सर्व्वे वा स्युः समांशिन इति पक्षद्वयेऽप्यपवादमाह—

शक्तस्यानीहमानस्य किञ्चिद्दत्त्वा पृथक् क्रियाम् ।
न्यूनाधिकविभक्तानां धर्म्म्यः * पितृकृतः स्मृतः ॥ ११७

स्वयमेव द्रव्यार्ज्जनसमर्थस्य पितृद्रव्यमनीहमानस्यानिच्छतो यत् किञ्चिदसारमपि दत्त्वा पृथक्‌क्रियाविभागः कार्य्यः पित्रा, तत्पुत्रादीनां दायजिघृक्षा माभूदिति ज्येष्ठं वा श्रेष्ठभागेनेति न्यूनाधिकविभागो दर्शितः। तत्र शास्त्रोक्तोद्धारादिविषम-विभागव्यतिरेकेणान्यथा विषमविभागनिषेधार्थमाह न्यूनाधिकविभागेन विभक्तानां पुत्राणामसौ न्यूनाधिकविभागो यदि धर्म्म्यः शास्त्रोक्तो भवति तदासौ पितृकृतः कृतएव न निवर्त्तते इति मन्वादिभिः स्मृतः। अन्यथा तु पितृकृतोऽपि निवर्त्तत इत्यभिधाय यथाह नारदः—व्याधितः कुपितश्चैव विषयासक्तमानसः, अन्यथा-शास्त्रकारीच न विभागः पिता प्रभुरिति ॥ इदानीं विभागस्य कालान्तरं कर्त्तन्तरं प्रकारनियममाह—

विभजेरन् सुताः पित्रोरूर्द्ध्वं रिक्थमृणं समम् ।
मातुर्दुहितरः शेषमृणात्ताभ्य ऋतेऽन्वयः ॥ ११८

पित्रोर्म्मातापित्रोरूर्द्ध्वं प्रयाणादिति कालो दर्शितः, सुता इति कर्त्तारो दर्शिताः, सममिति प्रकारनियमं, सममेवेति रिक्थमृणञ्च विभजेरन्। नन्दूर्द्ध्वं पितुश्च मातुश्चेत्युपक्रम्य ज्येष्ठ एवतु गृह्णीयात् पित्र्यं धनमशेषत, शेषास्तमुपजीवेयुर्यथैव पितरन्तथेत्युक्तम्। जेष्ठस्यविंश उद्धारः सर्व्वद्रव्याच्च यद्वरम्, ततोऽर्द्धं मध्यमस्य स्यात्तुरीयन्तु यवीयस इति। सर्व्वस्माद्धनसमुदायाद्विंशतितमो भागः, सर्व्वद्रव्येभ्यश्च यच्छ्रेष्ठं तज्ज्येष्ठाय दातव्यम्। तदर्द्धं चत्वारिंशत्तमोभागो मध्यमञ्च द्रव्यं मध्यमाय दातव्यम्। तदर्द्धमशीतितमोभागो हीनञ्च द्रव्यं कनिष्ठाय दातव्यमिति। माता-पित्रोरूर्द्ध्वं विभजतामुद्धारविभागो मनुना दर्शित, तथा उद्धारेऽनुद्धृते त्वेषामियं स्यादंशकल्पना, एकाधिक हरेज्ज्येष्ठः पुत्रो ऽध्यर्द्धं ततोऽनुजः, अंशमंशं यवीयांस इति धर्म्मोव्यवस्थित इति। ज्येष्ठस्य द्वौ भागौ तदनन्तरं जातस्य सार्द्ध एकोभाग स्ततोनुजानामेकैकोऽपि भाग इत्युद्धारव्यतिरेकेणापि विषमोभागोदर्शितः। पित्रोरूर्द्ध्वं विभजतां जीवद्विभागे च स्वयमेव विषमो विभागो दर्शितो ज्येष्ठं वा श्रेष्ठभागेनेति। अतः सर्व्वस्मिन्नपि काले विषमोविभागोस्तीति। कथं सममेव विभजेरन्निति नियम्यते, अत्रोच्यते सत्यम् अयं विषमोभागः शास्त्रदृष्टस्तथापि लोकविद्विष्टत्वान्ना-नुष्ठेयः। अस्वर्ग्यं लोकविद्विष्टं धर्म्ममप्याचरेन्नत्विति निषेधात् यथा महोक्षं वा महाजं

* Another reading is धर्म्मः

वा श्रोत्रियायोपकल्पयेदिति विधानेनापि लोकविद्विष्टत्वादननुष्ठानम्। यथा वा मैत्रावरुणीं गामनुबन्ध्यामालभेत इति गवालम्भनविधानेऽपि लोकविद्विष्टत्वादननुष्ठानम्। उक्तञ्च-यथानियोगधर्म्मो नो नानुबन्ध्यावधोऽपि वा तथोद्धारविभागोऽपि नैव सम्प्रतिवर्त्तत इति। आपस्तम्बोऽपि—जीवन् पुत्रेभ्यो दायं विभजेत् सममिति स्वमतमुक्त्वा ज्येष्ठो दायाद इति एक इति कृत्स्नधनग्रहणं ज्येष्ठस्यैकीयमतेनोपन्यस्य देशविशेषे सुवर्णं कृष्णा गाव: कृष्णं भौमं ज्येष्ठस्य रथ: पितु: परीभाण्डं च गृहेऽलङ्कारो भार्य्याया ज्ञातिधनञ्चेत्येकस्यैकीयमते नैवोद्धारविभागं दर्शयित्वा तच्छास्त्रविप्रतिषिद्धमिति निराकृतवान्। तं च शास्त्रविप्रतिषेधं स्वयमेव दर्शयतिस्म मनु:पुत्रेभ्यो दायं विभजेदित्यविशेषेण श्रूयते इति तस्मादिषमो भाग:। शास्त्रदृष्टोऽपि लोकविरोधात् श्रुतिविरोधाच्च नानुष्ठेय इति सममेव विभजेरन्निति नियम्यते। मातापित्रोधनं सुता विभजेरन्नित्युक्तं। तत्र मातृधनेऽपवादमाह—मातुर्देनं दुहितरो विभजेरन् ऋणाच्छेषं मातृकृतं ऋणं पुत्रैरेवापाकरणीयं न दुहितृभि:, ऋणावशिष्टं तु धनं दुहितरो गृह्णीयुरित्युक्तं चेत् पुमान् पुंसोऽधिके शुक्रे स्त्री भवत्यधिके स्त्रिया इति स्त्र्यवयवानां दुहितृषु बाहुल्यात् स्त्रीधनं दुहितृगामि पितृधनं पुत्रगामि पित्रवयवानां पुत्रेषु बाहुल्यादिति। तत्र च गौतमेन विशेषो दर्शित:—स्त्रीधनं दुहितृणामप्रत्तानामप्रतिष्ठितानाञ्चेति अस्यार्थ: प्रत्ताप्रत्तासमवायेऽप्रत्तानामेव स्त्रीधनं प्रत्तासु चाप्रतिष्ठितासमवाये प्रतिष्ठितानाञ्चेति। अप्रतिष्ठिता निर्द्धना.। दुहित्रभावे मातृधनमृणावशिष्टं को गृह्णीयादित्यत आह—ताभ्योदुहितृभ्यो विना दुहितृणामभावे अन्वय: पुत्रादिर्गृह्णीयात्, एतच्च विभजेरन् सुता: पित्रोरूर्द्ध्वमित्यनेनैव सिद्धं स्पष्टार्थमुक्तम्॥ अविभाज्यमाह—

पितृद्रव्याविरोधेन यदन्यत् स्वयमर्जितम्।
मैत्रमौद्वाहिकञ्चैव दायादानां न तद्भवेत्॥ ११९
क्रमादभ्यागतं द्रव्यं हृतमप्युद्धरेत्तु य:।
दायादेभ्यो न तद्दद्याद्विद्यया लब्धमेव च॥ १२०

मातापित्रोर्द्रव्याविनाशेन यत् स्वयमर्ज्जितं मैत्रं मित्रसकाशात् यल्लब्धमौद्वाहिकं विवाहलब्धं दायादानां भ्रातृणान्तन्न भवेत्। क्रमात् पितृक्रमादायातं यत्किञ्चित् द्रव्यं अन्यैर्हृतमसामर्थ्यादिना पित्रादिभिरनुद्धृतं य: पुत्राणां मध्ये इतराभ्यनुज्ञयोद्धरति तद्दायादेभ्यो भ्रात्रादिभ्यो न दद्यात् उद्धर्त्तैव गृह्णीयात्। तत्रचेत्तुरीयांशमुद्धर्त्ता लभते शेषं तु सर्व्वेषां सममेव, यथाह शङ्ख:। पूर्व्वं नष्टान्तु यो भूमिमेकश्चेदुद्धरेत् क्रमात्, यथाभागं लभेतेऽन्ये तद्दत्त्वांशन्तु तुरीयकमिति क्रमादभ्यागतमिति शेष:।

तथा विद्यया वेदाध्ययनेनाध्यापनेन वेदार्थव्याख्यानेन वा यल्लब्धं तदपि दायादेभ्यो न दद्यात्। अर्जक एव गृह्णीयात् अत्र च पितृद्रव्याविरोधेन यत्किञ्चित् स्वयमर्जितमिति सर्व्वशेषः। अतश्च पितृद्रव्याविरोधेन यन्मैत्रमर्जितं पितृद्रव्याविरोधेन यदौद्वाहिकं पितृद्रव्याविरोधेन यत्क्रमादायातमुद्धृतं पितृद्रव्याविरोधेन विद्यया यल्लब्धमिति प्रत्येकमभिसम्बध्यते। तथा च पितृद्रव्याविरोधेन प्रत्युपकारेण यन्मैत्रं आसुरादिविवाहेषु यल्लब्धं, यथा पितृद्रव्यव्ययेन यत्क्रमादायातमुद्धृतं तथा पितृद्रव्यव्ययेन लब्धया विद्यया यल्लब्धं तत्सर्व्वं सर्व्वैर्भ्रातृभिः पिता च विभजनीयम्, तथा पितृद्रव्याविरोधेनेत्यस्य सर्व्वशेषत्वादेव पितृद्रव्याविरोधेन प्रतिग्रहलब्धमिति विभजनीयम्। अस्य च सर्व्वशेषत्वाभावे मैत्रमौद्वाहिकमित्यादिना लब्धव्यम्। अथ पितृद्रव्याविरोधे नापि यन्मैत्रादिलब्धं तस्याविभाज्यत्वात् यन्मैत्रादिवचनमित्यर्थवदित्युच्यते। तथा सति समाचारविरोधः विद्यालब्धे नारदवचनविरोधश्च। कुटुम्बं बिभृयाद् भ्रातुर्यो विद्यामधिगच्छतः, भागं विद्याधनात्तस्मात् स लभेताश्रुतोऽपि सन्निति। तथा विद्याधनस्य विभाज्यलक्षणमुक्तं कात्यायनेन, परभक्तोपयोगेन विद्याप्राप्तान्यतस्तु या तया लब्धं धनं यत्तु विद्याप्राप्तं तदुच्यत इति। तथा पितृद्रव्याविरोधेनेत्यस्य भिन्नवाक्यत्वे प्रतिग्रहलब्धस्याविभाज्यत्वमाचारविरुद्धमापद्यते, एतदेव स्पष्टीकृतं मनुना—अनुपघ्नन् पितृद्रव्यं श्रमेण यदुपार्जयेत्, दायादेभ्यो न तद्दद्याद्विद्यया लब्धमेव चेति श्रमेण सेवायुद्धादिना। ननु पितृद्रव्याविरोधेन यन्मैत्रादिलब्धं द्रव्यं तदविभाज्यमिति न वक्तव्यं, विभागप्राप्त्यभावात्। यत् येन लब्धं तत्तस्यैव नान्यस्येतो प्रसिद्धतरम्। प्राप्तिपूर्व्वकश्च प्रतिषेधः। अत्र कश्चिदित्थं प्राप्तिमाह— यत् किञ्चित् पितरि प्रेते धनं ज्यष्ठोऽधिगच्छति भागी यवीयसां तत्र यदि विद्यानुपालिन इति। ज्येष्ठो वा कनिष्ठो वा मध्यमो वा पितरि प्रेते अप्रेते वा यवीयसां वर्षीयसाञ्चेति व्याख्यानेन पितरि सत्यसति च मैत्रादीनां विभाज्यत्वं प्राप्तत्वं प्रतिषिध्यते इति तदसत्। नह्यत्र प्राप्तस्य प्रतिषेधः किन्तु निषिद्धस्यानुवादोऽयम्। लोकसिद्धस्यैवानुवादकान्येव प्रायेणास्मिन् प्रकरणे वचनानि, अथवा समर्वतंस्तु यत् प्राप्तं सर्व्वं तत्र समांशिन इति प्राप्तस्यापवाद इति सन्तुष्यति भवान्। अतश्च यत्किञ्चित पितरि प्रेते इत्यस्मिन् वचने ज्येष्ठादिपदादिविवक्षया प्राप्तिरितिव्यामोहमात्रं, अतो मैत्रादिवचनैः पितुः प्रागूर्द्ध्वं वा विभज्यत्वेनोक्तस्य यत्किञ्चित् पितरि प्रेत इत्यपवाद इति व्याख्येयम्। तथाऽन्यदप्यविभाज्यमुक्तं मनुना, "वस्त्रं पत्रमलङ्कारं कृतान्नमुदकं स्त्रियः, योगक्षेमप्रचारञ्च न विभाज्यं प्रचक्षते" इति। धृतानामेव वस्त्राणामविभाज्यत्वम्। यत्येन धृतं तत्तस्यैव पितृधृतानि तु पितुरूर्द्ध्वं विभजतां

श्राद्धभोक्ते दातव्यानि यथाह बृहस्पति: "वस्त्रालङ्कारशय्यादि पितुर्यद्वाहनादिकम् गन्धमाल्यै: समभ्यर्च्य श्राद्धभोक्त्रे समर्पयेदिति"। अभिनवानि तु वस्त्राणि विभज्यान्येव पत्रं वाहनमश्वशिविकादि तदपि यत्येनारूढं तत्तस्यैव पित्रा तु वस्त्रवदेव अश्वादीनां बहुत्वे तु तद्विक्रयोपजीविनां विभाज्यत्वमेव वैषम्येणाविभाज्यत्वे ज्येष्ठस्य अजाविकं सैकशफं न जातु विषमं भजेत्। अजाविकं सैकशफं ज्येष्ठस्यैव विधीयत इति मनुस्मरणात्। अलङ्कारोपि यो येन धृत: स तस्यैवाधृत: साधारणो विभाज्य एव पत्यौ जीवति य: स्त्रीभिरलङ्कारो धृतो भवेत् न तं भजेरन्दायादा भजमाना: पतन्ति त इति। अलङ्कारोधृतोभवेदिति विशेषणोपादानादधृतानां विभाज्यत्वं गम्यते कृतान्नं तण्डुलमोदकादि तदप्यविभाज्यम्। यथासम्भवं भोक्तव्यम् उदकं उदकाधार: कूपादि: तच्च विषमं मूल्यद्वारेण न विभाज्यं पर्यायेणोपभोक्तव्यम्। स्त्रियश्च दास्यो विषमा मूल्यद्वारेण विभाज्या: पर्यायेण कर्मकारयितव्या:। अवरुद्धास्तु पित्रा स्वैरिण्याद्या: समा अपि पुत्रैर्न विभाज्या: स्त्रीषु च संयुक्तास्वविभाग इति गौतमस्मरणात्। योगश्च क्षेमश्च योगक्षेमं योगशब्देनालब्धलाभकारणं, श्रौतस्मार्ताग्निसाध्यमिष्टं कर्म लक्ष्यते, क्षेमशब्देन लब्धपरीक्षणहेतुभूतं बहिर्वेदिदानतड़ागारामनिर्म्माणादि पूर्त्तं कर्म लक्ष्यते तदुभयं पैतृकमपि पितृद्रव्यविरोधार्ज्जितमप्यविभाज्यं यथाह लौगाक्षि:—क्षेमं पूर्त्तं योगमिष्टमित्याहुस्तत्वदर्शिन: अविभाज्ये च ते प्रोक्ते शयनासनमेवचेति योगक्षेमशब्देन योगक्षेमकारिणो राजमन्त्रिपुरोहितादय उच्यन्ते इति केचित्। छत्रचामरशास्त्रोपानत्प्रभृतय इत्यन्ये प्रचारो गृहारामादिषु प्रवेशनिर्गममार्ग: सोऽप्यविभाज्य: यत्तूशनसा क्षेत्रस्याविभाज्यत्वमुक्तम् अविभाज्यं सगोत्राणामासहस्रकुलादपि याज्यं क्षेत्रं च पत्रं च कृतान्नमुदकं स्त्रिय इति। तद्ब्राह्मणोत्पन्नक्षत्रियादिपुत्रविषयम् न प्रतिग्रहभूर्देया क्षत्रियाय सुताय वै यद्यप्येषां पिता दद्यान्मृते विप्रासुतोहरेदिति स्मरणात्। याज्यं याजनकर्मलब्धं पितृप्रसादलब्धं पितृप्रसादलब्धस्याविभाज्यत्वं वक्ष्यते नियमातिक्रमस्याविभाज्यत्वमनन्तरमेव निरासितम्॥ पितृद्रव्यविरोधेन यदर्ज्जितं तद्विभजनीयमिति स्थितम्। तत्रार्ज्जकस्य भागद्वयं वशिष्ठवचनात् येन चैषां स्वयमुपार्ज्जितं स्यात् द्व्यंशमेव लभेतेत्यस्यापवादमाह—

सामान्यार्थसमुत्थाने विभागस्तु सम: स्मृत:।
अनेकपितृकाणान्तु पितृतो भागकल्पना॥ १२१

अविभक्तानां भ्रातॄणां साधारणस्यार्थस्य कृषिवाणिज्यादिना समुत्थाने सम्यग्वर्द्धने केनचित् कृते समएव विभागो नार्ज्जयितुरंशद्वयम्, पित्रा द्रव्ये तु पुत्राणां विभागो

दर्शितः ; इदानीं पैतामहे पौत्राणां विभागविशेषमाह—यद्यपि पैतामहे द्रव्ये पौत्राणां जन्मना स्वत्वं पुत्रैरविशिष्टं तथापि तेषां पितृद्वारेणैव पैतामहद्रव्यविभाग-कल्पना न स्वरूपापेक्षया। एतदुक्तं भवति यदा विभक्ता भ्रातरः पुत्रानुत्पाद्य दिष्टं गतास्तदैकस्य द्वौ पुत्रावन्यस्य त्रयो परस्य चत्वार इति पुत्राणां वैषम्ये तत्र द्वावेकं स्वपित्र्यमंशं लभेते। अन्ये त्रयोऽप्येकमंशं पित्र्यं चत्वारोऽप्येकमंशं पित्र्यं लभन्त इति। तथा केषुचित् पुत्रेषु ध्रियमाणेषु केषुचित् पुत्रानुत्पाद्य विनष्टेष्वयमेव न्यायो ध्रियमाणाः स्वांशानेव लभन्ते। नष्टानामपि पुत्राः पित्र्यानेवांशान् लभन्त इति वाचनिकी व्यवस्था। अधुना विभक्ते पितर्यविद्यमानभ्रातृके वा पौत्रस्य पैतामहे द्रव्ये विभागी नास्ति अध्रियमाणे पितरि पितृतोभागकल्पनेत्युक्तत्वात् भवतु वा स्वार्जितवत् पितुरिच्छयैवेत्याशङ्कित आह—

> भूर्या पितामहोपात्ता निबन्धो द्रव्यमेव च।
> तत्र स्यात् सदृशं स्वाम्यं पितुः पुत्रस्य चैव हि॥ १२२

भूः शालिक्षेत्रादिका, निबन्ध एकस्य पर्णभारकस्येयन्ति पर्णानि तथैकस्य क्रमुकफलभारकस्येयन्ति क्रमुकफलानीत्याद्युक्तलक्षणः, द्रव्यं सुवर्णरजतादि यत् पितामहेन प्रतिग्रहविजयादिना लब्धं, तत्र पितुः पुत्रस्य च स्वाम्यं लोकप्रसिद्धमिति कृत्वा विभागोऽस्ति। हि यस्मात्तत्सदृशं समानं तस्मान्न पितुरुच्छं यो विभागी नापि पितुर्भागद्वयम् अतः स्वपितृतोभागकल्पनेत्यप्येतत् स्वाम्ये समेऽपि वाचनिकम्। विभागञ्चेत् पिता कुर्य्यादित्येतत् स्वार्जितविषयं। तथा द्वावंशौ प्रतिपद्येत विभजन्नात्मनः पितेत्येतदपि स्वार्जितविषयम्, जीवतोरस्वतन्त्रः स्यान्जरयापि समन्वित इत्येतदपि पारतन्त्र्यं मातापितृर्जितद्रव्यविषयम्। तथा अनीशास्तेऽपि जीवतो-रित्येतदपि यथा च सरजस्कायां मातरि सस्पृहे च पितरि विभागमनिच्छत्यपि पुत्रेच्छया पैतामहद्रव्यविभागो भवति। तथा विभक्तेन पित्रा पैत्रामहे द्रव्ये दीयमाने विक्रीयमाणे वा पौत्रस्य निषेधेऽप्यधिकारः पितृर्जिते तु न निषेधाधिकारः तत्-परतन्त्रत्वात्, अनुमतिस्तु कर्त्तव्या तथापि पैतृके पैतामहे च स्वाम्यं यद्यपि जन्मनैव तथापि पैतृके परतन्त्रत्वात् पितुः स्वार्जकत्वेन प्राधान्यात् पित्रा विनियुज्यमाने स्वार्जिते द्रव्ये पुत्रेणानुमतिः कर्त्तव्या। पैतामहे तु द्वयोः साम्यमविशिष्टमिति निषेधाधिकारोऽप्यस्तीति विशेषः। मनुरपि पैतृकं तु पिता द्रव्यमनवाप्तं यदाप्नुयात्, न तत्पुत्रैर्भजेत् सार्द्धमकामः स्वयमर्जितमिति। यत् पितामहार्जितं केनाप्यपहृतं पितामहेनानुद्धृतं यदि पितोद्धरति तत् स्वार्जितमिव पुत्रैः सार्द्धमकामः स्वयं न

विभजेदिति वदन् पितामहार्जितमकामोऽपि पुत्रेच्छया पुत्रैः सह विभजेदिति दर्शयति। विभागोत्तरकालमुत्पन्नस्य कथं भागकल्पनेत्यत आह—

विभक्तेषु सुतो जातो सवर्णायां विभागभाक्।

दृश्याद्वा तद्विभागः स्यादायव्ययविशोधितात्॥ १२२

विभक्तेषु पुत्रेषु पश्चात् सवर्णायां भार्यायामुत्पन्नो विभागभाक्। विभज्यत इति विभागः, पित्रोर्भागस्तं भजतीति विभागभाक्, पित्रोरूर्द्ध्वं तयोरंशं लभत इत्यर्थः। मातृभागश्चासत्यां दुहितरि मातुर्दुहितरः शेषमित्युक्तत्वात्, असवर्णायामुत्पन्नस्तु स्वांशमेव पित्र्याल्लभते मातृकन्तु सर्व्वमेव। एतदेव मनुनोक्तम् ऊर्द्ध्वं विभागाज्जातस्तु पित्र्यमेव हरेद्धनमिति पित्रोरिदं पित्र्यमिति व्याख्येयम् अनीशः पूर्व्वजः पित्रोर्भ्रातुर्भागे विभक्तजः इति स्मरणात्। मातापित्रोर्व्विभागे विभागात् पूर्व्वमुत्पन्नो न स्वामी विभक्तजश्च भ्रातुर्भागे न स्वामीत्यर्थः। तथा विभागोत्तरकालं पित्रा यत्किञ्चिदर्ज्जितं तत्सर्व्वं विभक्तजस्यैव, पुत्रैः सह विभक्तेन पित्रा यत्स्वयमर्ज्जितम्, विभक्तजस्य तत्सर्व्वमनीशाः पूर्व्वजाः स्मृता इति स्मरणात्। ये च विभक्ताः पित्रासह संसृष्टास्तैः सार्द्धं पितुरूर्द्ध्वं विभक्तजो विभजेत यथाह मनुः। संसृष्टास्तेन वा ये स्युर्व्विभजेत स तैः सहेति पितुरूर्द्ध्वं पुत्रेषु विभक्तेषु पश्चादुत्पन्नस्य कथं भागकल्पनेत्यत आह—तस्य पितरि प्रेते भ्रातृविभागसमयेऽस्पष्टगर्भायां मातरि भ्रातृविभागोत्तरकालमुत्पन्नस्य विभागस्तद्विभागः कुत इत्यत आह—दृश्याद् भ्रातृभिर्गृहीताद्धनात् कीदृशात् आयव्ययविशोधितात् आयः प्रतिदिवसं प्रतिमासं प्रत्यब्दं वा यदुत्पद्यते, व्ययः पितृकृतर्णापाकरणम्, ताभ्यामायव्ययाभ्यां यच्छोधितं तस्मात् उद्धृत्य तद्भागो दातव्यः स्यात् एतदुक्तं भवति। प्रातिस्विकेषु भागेषु तदुत्थमायं प्रवेश्य पितृकृतमृणमपनीयावशिष्टेभ्यः स्वेभ्यः स्वेभ्योभागेभ्यः किञ्चित् किञ्चिदुद्धृत्य विभक्तजस्य भागः स्वभागसमः कर्त्तव्य इति। एतच्च विभागसमये अप्रज भ्रातृभार्य्यायां स्पष्ट गर्भायां विभागादूर्द्ध्वं उत्पन्नस्यापि वेदितव्यम्। अस्पष्टगर्भायां तु प्रसवं वीक्ष्य विभागः कर्त्तव्यः यथाह वशिष्ठः। अथ भ्रातॄणां दायविभागो याश्चानपत्याः स्त्रियस्तासामापुत्रलाभादिति गृहीतगर्भाणामाप्रसवात् प्रतीक्षणीयमिति योजनीयम्। विभक्तजः पित्र्यं मातृकञ्च सर्व्वं धनं गृह्णातीत्युक्तं, तत्र यदि विभक्तः पिता माता वा विभक्ताय पुत्राय स्नेहवशादाभरणादिकं प्रयच्छति तत्र विभक्तजेन दानप्रतिषेधो न कर्त्तव्यो नापि दत्तं प्रत्याहर्त्तव्यमित्याह—

पितृभ्यां यस्य यद्दत्तं तत्तस्यैव धनं भवेत्।

पितुरूर्द्ध्वं विभजतां माताप्यंशं समं हरेत्॥ १२४

मातापितृभ्यां विभक्ताभ्यां पूर्व्वविभक्तस्य पुत्रस्य यद्दत्तमलङ्कारादि तत्तस्यैव पुत्रस्य न विभक्तजस्य स्वम्भवति। न्यायस्याम्याद्विभागात् प्रागपि यस्य यद्दत्तं तत्तस्यैव तथाऽसति विभक्तजे विभक्तयोः पित्रोरंशन्तदूर्द्ध्वं विभजतां यस्य यद्दत्तं तत्तस्यैव नान्यस्येति वेदितव्यम्। जीवद्विभागे स्वपुत्रसमांशित्वं पत्नीनामुक्तम् यदि कुर्य्यात् समानंशानित्यादिना पितुरूर्द्ध्वं विभागेऽपि मातुः स्वपुत्रसमांशित्वं दर्शयितुमाह—पितुरूर्द्ध्वं पितुः प्रयाणादूर्द्ध्वं विभजतां मातापि स्वपुत्रांशसमं अंशं हरेत् यदि स्त्रीधनं न दत्तं दत्तेत्वर्द्धांशहारिणीति वक्ष्यते॥ पितरि प्रेते यद्यसंस्कृता भ्रातरः सन्ति तत् सस्कारे कोऽधिक्रियत इत्यत आह—

असंस्कृतास्तु संस्कार्य्या भ्रातृभिः पूर्व्वसंस्कृतैः।
भगिन्यश्च निजादंशाद्दत्त्वांशन्तु तुरीयकम्॥ १२५

पितुरूर्द्ध्वं विभजद्भिर्भ्रातृभिरसंस्कृता भ्रातरः समुदायद्रव्येण संस्कर्त्तव्याः असंस्कृतासु भगिनीषु विशेषमाह—अस्यार्थः भगिन्यश्चासस्कृताः संस्कर्त्तव्या भ्रातृभिः, किं कृत्वा निजादंशाच्चतुर्थमंशं दत्त्वा, अनेन दुहितरोपि पितुरूर्द्ध्वं अंशभागिन्य इति गम्यते। तत्र निजादंशादिति प्रत्येकपरिकल्पितादंशादुद्धृत्य चतुर्थांशो दातव्य इति। अयमर्थो न भवति किन्तु यज्जातीया कन्या तज्जातीयपुत्रभागचतुर्थांशभागिनी कर्त्तव्या एतदुक्तं भवति। यदि ब्राह्मणी सा कन्या तदा ब्राह्मणीपुत्रस्य यावानंशो भवति तस्य चतुर्थांशः तस्या भवतीति, तद्यथा यदि कस्यचिद्ब्राह्मण्येव एकापत्नी पुत्रश्चैकः कन्याचैका तत्र पित्र्यं सर्व्वमेव द्रव्यं द्विधा विभज्य तत्रैकं भागं चतुर्धा विभज्य तुरीयमंशं कन्यायै दत्त्वा शेषं पुत्रो गृह्णीयात्। अथ तु द्वौपुत्रौ एकाकन्या तदा पितृधनं सर्व्वं त्रिधा विभज्य तत्रैकं भागं चतुर्धा विभज्य तुरीयमंशं कन्यायै दत्त्वा शेषं द्वौपुत्रौ विभज्य गृह्णीतः। अथ त्वेकः पुत्रो द्वे कन्ये तदा पित्र्यं धनं त्रिधा विभज्य एकं भागं चतुर्धा विभज्य तत्र द्वौभागौ द्वाभ्यां कन्याभ्यां दत्त्वाऽवशिष्टं सर्व्वं पुत्रो गृह्णात्येवं समानजातीयेषु समविषमेषु भ्रातृषु भगिनीषु च योजनीयम्। यदातु ब्राह्मणीपुत्र एकः क्षत्रियकन्यैका तत्र पित्र्यं धनं सप्तधा विभज्य क्षत्रियापुत्रभागांस्त्रीन् चतुर्धा विभज्य तुरीयांशं क्षत्रियाकन्यायै दत्त्वा शेषं ब्राह्मणीपुत्रो गृह्णाति। यत्र तु द्वौ ब्राह्मणीपुत्रौ क्षत्रियाकन्याचैका तत्र पित्र्यं धनं एकादशधा विभज्य तेषु त्रीनंशान् क्षत्रियापुत्रभागान् चतुर्धा विभज्य चतुर्थमंशं क्षत्रियकन्यायै दत्त्वा शेषं सर्व्वं ब्राह्मणीपुत्रौ विभज्य गृह्णीतः। एवं जातिवैषम्ये भ्रातॄणां भगिनीनाञ्च संख्यायाः साम्ये वैषम्ये च सर्व्वत्रोहनीयम्, न च निजादंशाद्दत्वांशन्तु तुरीयकमिति तुरीयांशाविवक्षया संस्कारमात्रोपयोगि द्रव्यं दत्त्वेति

व्याख्यानं युक्तम् मनुवचनविरोधाच्च ;—स्वेभ्योऽंशेभ्यस्तु कन्याया: प्रदद्युर्भ्रातर: पृथक् स्वात् स्वादंशाच्चतुर्भागं पतिता: स्युरदित्सव इति। अस्यार्थ:,ब्राह्मणादयो भ्रातरो ब्राह्मणीप्रभृतिभ्यो भगिनीभ्य: स्वेभ्य: स्वजातिविहितेभ्योऽंशेभ्यश्चतुरोऽंशान् हरेद्विप्र इत्यादि वक्ष्यमाणेभ्य: स्वात्स्वादंशादात्मीयभागाच्चतुर्थं भागं दद्यु: नचात्मीयभागादुद्धृत्य चतुर्थांशोदेय इत्युच्यते। किन्तु स्वजातिविहितादेकस्मादंशात् पृथक् पृथगेकस्यै कन्यायै चतुर्थांऽशोदेय इति। जातिवैषम्ये सङ्ख्यावैषम्ये च विभागक्लृप्तिरुक्तैव, पतिता: स्युरदित्सव इत्यकरणे प्रत्यवायश्रवणादवश्यदातव्यता प्रतीयते। अत्रापि चतुर्भागवचनमविवक्षितं संस्कारोपयोगि द्रव्यदानमेव विवक्षितमिति चेन्न स्मृतिद्वयेपि चतुर्थांशदानाविवक्षायां प्रमाणाभावाददाने प्रत्यवायश्रवणाच्चेति। तदपि कैश्चिदुच्यते अंशदानविवक्षायां बहुभ्रातृकायां बहुधनत्वं बहुभगिनीकस्य च निर्धनतामाप्नोतीति तदुक्तरीत्यापरिहृतमेव नह्यत्रात्मीयाद्भागादुद्धृत्य चतुर्थांशस्य दानमुच्यते। येन तथास्यादतोऽ सहायमेधातिथिप्रभृतीनां व्याख्यानमेव चतुरस्रम् न भारुचे: तस्मात् पितुरूर्द्ध्वं कन्याप्यंशभागिनी पूर्व्वञ्चेत् यत् किञ्चित् पिता ददाति तदेव लभते विशेषवचनाभावादिति सर्व्वमनवद्यम् एवं विभागांश्चेत् पिता कुर्य्यादित्यादिना प्रबन्धेन समानजातीयानां भ्रातॄणां परस्परं पित्राच सह विभागक्लृप्तिरुक्ता। अधुना भिन्नजातीयानां विभागमाह—

> चतुस्त्रिद्व्येकभागा: स्युर्व्वर्णशोब्राह्मणात्मजा:।
>
> क्षत्रजास्त्रिद्व्येकभागा विड्जास्तु द्व्येकभागिन:॥ १२६

तिस्रोवर्णानुपूर्व्व्येणेति ब्राह्मणस्य चतस्र: क्षत्रियस्य तिस्रो वैश्यस्य द्वे शूद्रस्यैकेति भार्य्या दर्शिता स्तत्र ब्राह्मणात्मजा ब्राह्मणोत्पन्ना वर्णश: वर्णशब्देन ब्राह्मणादिवर्णा: स्त्रियउच्यन्ते संख्यैकवचनाच्च वीप्सायामित्यधिकरणकारकादेकवचनाद्वीप्सायां शम् अतश्च वर्णे वर्णे ब्राह्मणोत्पन्ना यथाक्रमं चतुस्त्रिद्व्येकभागा: स्युर्भवेयु: एतदुक्तं भवति। ब्राह्मणेन ब्राह्मण्या मुत्पन्ना एकैकशश्चतुरश्चतुरो भागाल्लभन्ते तेनैव क्षत्रियायामुत्पन्ना स्त्रींस्त्रीन् वैश्यायां द्वौ द्वौ शूद्रायामेकमेकमिति। क्षत्रजा: क्षत्रियेणोत्पन्ना: वर्णश इत्यनुवर्त्तते यथाक्रमं त्रिद्व्येकभागा: क्षत्रियेणोक्तलक्षणेन क्षत्रियायामुत्पन्ना: प्रत्येकं त्रीन् त्रीन् भागान् लभन्ते, वैश्यायां द्वौ द्वौ, शूद्रायामेकमेकं विट्जा. वैश्येनोत्पन्ना: अत्रापि वर्णश इत्यनुवर्त्तते यथाक्रमं द्व्येकभागिन: वैश्येन वैश्यायामुत्पन्ना: प्रत्येकं द्वौ द्वौ भागौ लभन्ते, शूद्रायामेकमेव शूद्रस्यैकैव भार्य्येति। भिन्नजातीयपुत्राभावात्तत्पुत्राणां पूर्व्वोक्त एव विभाग:। यद्यपि चतुस्त्रीद्व्येकभागा इत्यविशेषेणोक्तं तथापि प्रतिग्रह-प्राप्तभूव्यतिरिक्तविषयमिदं द्रष्टव्यम्। यत: स्मरति न प्रतिग्रहभूर्द्देया क्षत्रियादिसुताय

वै यद्यप्येषां पिता दद्यात् स्मृते विप्रासुतोऽहरेदिति प्रतिग्रहग्रहणात् क्रयादिना लब्धा भूः क्षत्रियादिसुतानामपि भवत्येव। शूद्रापुत्रस्य विशेषप्रतिषेधाच्च शूद्रां द्विजातिभिर्जातो न भूमेर्भागमर्हतीति यदि क्रयादिप्राप्ता भूः क्षत्रियादिसुतानां न भवेत्तदा शूद्रापुत्रस्य विशेषप्रतिषेधो नोपपद्यते। यत्पुनः ब्राह्मणक्षत्रियविशां शूद्रापुत्रो न रिक्थभाक् यदेवास्य पिता दद्यात् तदेवास्य धनं भवेदिति। तदपि जीवता पित्रा यदि शूद्रापुत्राय किमपि प्रदत्तं स्यात्तद्विषयं यदा तु प्रसाददानं नास्ति तदैकांशभागित्वविरुद्धम्॥

अन्योन्यापहृतं द्रव्यं विभक्ते यत्तु दृश्यते।

ततपुनस्ते समैरंशैर्विभजेरन्निति स्थितिः॥ १२७

परस्परापहृतं समुदायद्रव्यं विभागकालेऽज्ञातं विभक्ते पितृधने यद्दृश्यते तत्समैरंशैर्विभजेरन् इत्येवं स्थितिः शास्त्रमर्य्यादा। अत्र समैरंशैरिति वदता उद्धारविभागो निषिद्धः। विभजेरन्निति वदता येन दृश्यते तेनैव न ग्राह्यमिति दर्शितं। एवं वचनस्यार्थवत्त्वान्न समुदायद्रव्यापहारे दोषाभावपरत्वं। ननु मनुना ज्येष्ठस्यैव समुदायद्रव्यापहारे दोषो दर्शितो न कनीयसां—यो ज्येष्ठो विनिकुर्व्वीत लोभात् भ्रातॄन् यवीयसः, स ज्येष्ठः स्यादभागश्च नियन्तव्यश्च राजभिरिति वचनात्, नैतत्, यतः सम्भावितस्वातन्त्र्यस्य पितृस्थानीयस्य ज्येष्ठस्यापि दोषं वदता ज्येष्ठपरतन्त्राणां कनीयसां पुत्रस्थानीयानां दण्डापूपिकन्यायात् सुतरां दोषो दर्शितएव। तथाचाविशेषेणैव दोषः श्रूयते, यो वै भागिनं भागान्नुदते च्यवते चैनं स यदि चैनं न च्यवते अथ पुत्रमथ पौत्रं च्यवत इति। यो भागिनं भागार्हं भागान्नुदते भागादपाकरोति भागं तस्मै न प्रयच्छति स भागानुन्नएनं नोत्तारं च्यवते नाशयति दोषिणं करोति यदि तं न नाशयति तदा तस्य पुत्रं पौत्रं वा नाशयतीति। ज्येष्ठविशेषमन्तरेणैव साधारणद्रव्यापहारिणो दोषः श्रुतः अथ साधारणं द्रव्यमात्मनोऽपि स्वम्भवतीति। स्वत्वबुद्ध्या गृह्यमाणं न दोषमावहतीति मतं तदसत्। स्वत्वबुद्ध्या गृहीतेऽप्यवर्जनीयतया परस्वमपि गृहीतमेवेति। निषेधानुप्रवेशाद्दोषमावहत्येव यथा नीवारेषु चरौ विपन्ने सदृशतया माषेषु गृह्यमाणेष्वयज्ञिया वै माषा इति निषेधो न प्रविशति मुद्गावयवबुद्ध्या गृह्यमाणत्वादिति पूर्व्वपक्षिणोक्ते मुद्गावयवेषु गृह्यमाणेष्ववर्जनीयतया माषावयवा अपि गृह्यन्त एवेति निषेधः प्रविशत्येवेति राद्धान्तिनोक्तं तस्माद् वचनतो न्यायतश्च साधारणद्रव्यापहारे दोषोऽस्त्येवेति सिद्धम्। इदानीमुद्धारस्य भागविशेषं दर्शयंस्तस्य स्वरूपमाह—

अपुत्रेण परक्षेत्रे नियोगोत्पादितः सुतः ।
उभयोरप्यसौ रिक्थी पिण्डदाता च धर्म्मतः ॥ १२८

अपुत्रां गुर्व्वनुज्ञात इत्युक्तविधिना अपुत्रेण देवरादिना परक्षेत्रे परस्य भार्य्यायां गुरुनियोगेनोत्पादितः पुत्र उभयोर्बीजिक्षेत्रिणोरसौ रिक्थी रिक्थहारी पिण्डदाता च धर्म्मत इत्यस्यार्थः । यदासौ नियुक्तो देवरादिः स्वयमप्यपुत्रोऽपुत्रस्य क्षेत्रे स्वपरपुत्रार्थं प्रवृत्तोऽयं जनयति स द्विपितृको द्व्यामुष्यायणो द्वयोरपि रिक्थहारी पिण्डदाता च । यदा तु नियुक्तः पुत्रवान् केवलं क्षेत्रिणः पुत्रार्थं प्रयतते तदा तदुत्पन्नः क्षेत्रिण एव पुत्रः भवति न बीजिनः । स च नियमेन बीजिनो रिक्थहारी पिण्डदो वेति यथोक्तं मनुना—क्रियाभ्युपगमात्त्वेव बीजार्थं यत् प्रदीयते तस्येह भागिनौ दृष्टौ बीजी क्षेत्रिक एव चेति । क्रियाभ्युपगमादिति अत्रोत्पन्नमपत्यमावयोरुभयोरपि भवत्विति संविदङ्गीकरणात् यत्क्षेत्रं क्षेत्रस्वामिना बीजावपनार्थं बीजिने दीयते तत्र तस्मिन् क्षेत्रे उत्पन्नस्यापत्यस्य बीजिक्षेत्रिणौ भागिनौ स्वामिनौ दृष्टौ महर्षिभिः तथा-फलं त्वनभिसन्धाय क्षेत्रिणां बीजिनां तथा-प्रत्यक्षं क्षेत्रिणामर्थो बीजाद्योनिर्ब्बलीयसीति फलं त्वनभिसन्धायेति अत्रोत्पन्नमपत्यमावयो रस्त्वित्येव मनभिसन्धाय परक्षेत्रे यदपत्यमुत्पाद्यते तदपत्यं क्षेत्रिण एव यतो बीजाद्योनिर्ब्बलीयसीति गवाश्वादिषु तथा दर्शनात् । अत्र नियोगो वाग्दत्ताविषय एव इतरस्य नियोगस्य मनुना निषिद्धत्वात् देवराद्वा सपिण्डाद्वा स्त्रिया सम्यक् नियुक्तया प्रजेप्सिताधिगन्तव्या सन्तानस्य परिक्षये । विधवायां नियुक्तस्तु घृताक्तो वाग्यतो निशि एकमुत्पादयेत् पुत्रं न द्वितीयं कथञ्चनेत्येवं नियोगमुत्पन्नस्य मनुः स्वयमेव निषेधति—नान्यस्मिन् विधवा नारी नियोक्तव्या द्विजातिभिः अन्यस्मिन् हि नियुञ्जाना धर्म्मं हन्युः सनातनम् नोद्वाहिकेषु मन्त्रेषु नियोगः कीर्त्त्यते क्वचित् न विवाहविधावुक्तं विधवावेदनं पुनः अयं द्विजैर्हि विद्वद्भिः पशुधर्म्मो विगर्हितः मनुष्याणामपि प्रोक्तो वेने राज्यं प्रशासति स महीमखिलां भुञ्जन् राजर्षिप्रवरः पुरा वर्णानां सङ्करञ्चक्रे कामोपहतचेतनः ततः प्रभृति यो मोहात्प्रमीतपतिकां स्त्रियम् नियोजयत्यपत्यार्थं गर्हन्ते तं हि साधव इति । न च विहितप्रतिषिद्धत्वात् विकल्प इति मन्तव्यं, नियोक्तॄणां निन्दाश्रवणात् स्त्रीधर्म्मेषु व्यभिचारस्य बहुदोषश्रवणात् संयमस्य प्रशस्तत्वाच्च । यथाह मनुरेव—कामन्तु क्षपयेत् देहं पुष्पमूलफलैः शुभैः न तु नामापि गृह्णीयात् पत्यौ प्रेते परस्य त्विति जीवनार्थं पुरुषान्तराश्रयणं प्रतिषिध्यते-आसीतामरणात् क्षान्ता नियता ब्रह्मचारिणी यो धर्म्म एकपत्नीनां काङ्क्षन्ती तमनुत्तमम् अनेकानि सहस्राणि कौमारब्रह्मचारिणाम् । दिवं गतानि विप्राणामकृत्वा कुलसन्ततिं मृते भर्त्तरि साध्वी स्त्री ब्रह्मचर्य्ये

व्यवस्थिता स्वर्गं गच्छन्त्यपुत्रापि यथा ते ब्रह्मचारिणः अपत्यलोभात् या तु स्त्री भर्त्तारमतिवर्त्तते सेह निन्दामवाप्नोति परलोकाच्च हीयत इति। पुत्रार्थमपि पुरुषान्तराश्रयणं निषेधति तस्मात् विहितप्रतिषिद्धत्वात् विकल्प इति न युक्तम्॥ एवं विवाहसंस्कृतानियोगे प्रतिषिद्धे कस्तर्हि धर्म्यो नियोग इत्यत आह—

यस्या म्रियेत कन्याया वाचा सत्ये कृते पतिः।
तामनेन विधानेन निजोविन्देत देवरः॥ १२९

यथाविध्यधिगम्यैनां शुक्लवस्त्रां शुचिव्रताम्।
मिथो भजेताप्रसवात् सकृत सकृदृतावृतौ॥ १३०

यस्मै वाग्दत्ता कन्या स प्रतिग्रहमन्तरेणैव तस्याः पतिरित्यस्मादेव वचनादवगम्यते तस्मिन् मृते देवरस्तस्य ज्येष्ठः कनिष्ठो वा निजः सोदरो विन्देत परिणयेत् यथाविधि यथाशास्त्रमधिगम्य परिणीय अनेन विधानेन घृताभ्यङ्गवाङ्नियमादिना शुक्लवस्त्रां शुचिव्रतां मनोवाक्कायसंयतां मिथोरहस्यागर्भग्रहणात् प्रत्यृत्वेकैकं वारं गच्छेत्। अयञ्च विवाहो वाचनिको घृताभ्यङ्गादिनियमवन्नियुक्ताभिगमनाङ्गमिति न देवरस्य भार्य्यत्वमापादयति। अतस्तदुत्पन्नमपत्यं क्षेत्रस्वामिन एव भवति न देवरस्य संविदा तूभयोरपि समानासमानजातीयपुत्राणां विभागक्लृप्तिरुक्ता। अधुना मुख्यगौणपुत्राणां दायग्रहणव्यवस्थां दर्शयिष्यन् तेषां स्वरूपं तावदाह—

औरसोधर्म्मपत्नीज स्तत्समः पुत्रिकासुतः।
क्षेत्रजः क्षेत्रजातस्तु सगोत्रेणेतरेण वा॥ १३१
गृहे प्रच्छन्न उत्पन्नो गूढजस्तु सुतः स्मृतः।
कानीनः कन्यकाजातो मातामहसुतोमतः॥ १३२
अक्षतायां क्षतायाम्वा जातः पौनर्भवः सुतः।
दद्यान्माता पिता वा यं स पुत्रो दत्तकोभवेत्॥ १३३
क्रीतश्च ताभ्यां विक्रीतः कृत्रिमः स्यात् स्वयंकृतः।
दत्तात्मा तु स्वयंदत्तो गर्भेविन्नः सहोढजः॥ १३४
उत्सृष्टो गृह्यते यस्तु सोऽपविद्धो भवेत् सुतः॥

उरसो जात औरसः पुत्रः स च धर्म्मपत्नीजः सवर्णा धर्म्मविवाहोढा धर्म्मपत्नी तस्यां जातः औरसः पुत्रोमुख्यः, तत्समः पुत्रिकासुतः, तत्सम औरससमः पुत्रिकायाः सुतः पुत्रिकासुतः अतएवौरससमः। यथाह वसिष्ठः-अभ्रातृकां प्रदास्यामि तुभ्यं कन्यामलङ्कृताम् अस्यां यो जायते पुत्रः स मे पुत्रो भवेदितीति अथवा पुत्रिकेव सुतः पुत्रिकासुतः सोऽप्यौरससमएव पितृवयवानामल्पत्वात्

मात्रवयवानां बाहुल्याच्च। यथाह वसिष्ठः द्वितीयः पुत्रिकैवेति द्वितीयः पुत्रः पुत्रिकैवेत्यर्थः। द्व्यामुष्यायणस्तु जनकस्यौरसादपकृष्टोऽन्यक्षेत्रोत्पन्नत्वात्। क्षेत्रजः क्षेत्रजातस्तु सगोत्रेणेतरेण वा इतरेणासपिण्डेन देवरेण वोत्पन्नः पुत्रः क्षेत्रजः॥

गूढजः पुत्रो भर्तृगृहे प्रच्छन्न उत्पन्नो हीनाधिकजातीयपुरुषजत्वपरिहारेण पुरुषविशेषजत्वनिश्चयाभावेऽपि सवर्णजत्वनिश्चये सति बोद्धव्यः। कानीनस्तु कन्यकायामुत्पन्नः पूर्ववत् सवर्णात्, स मातामहपुत्रः, यद्यनूढा सा भवेत् तथापि पितृगृह एव संस्थिता, अथ तूढा तदा वोढुरेव पुत्रः, यथाह मनुः—पितृवेश्मनि कन्यातु यं पुत्रं जनयेद्रहः तं कानीनं वदेन्नाम्ना वोढुः कन्यासमुद्भवमिति॥

पौनर्भवस्तु पुत्रोऽक्षतायां क्षतायाम्वा सवर्णादुत्पन्नः। मातापितृभ्यां दत्तः पुत्रः। मातापितृभ्यामुत्सृष्टो भर्तृसमक्षं पोषिते प्रेते वा भर्तरि। पितापोषाभ्यां वा सवर्णो यस्मै दीयते स तस्य दत्तकः पुत्रः। यथाह मनुः—माता पिता वा दद्यातां यमद्भिः पुत्रमापदि सदृशं प्रीतिसंयुक्तं स ज्ञेयो दत्त्रिमः सुत इति। आपद्ग्रहणादनापदि न देयः दातुरयं प्रतिषेधः। तथा एकपुत्रो न देयः नत्वेवैकं पुत्रं प्रतिगृह्णीयात् दद्याद्वेति वसिष्ठस्मरणात्। तथानेकपुत्रसद्भावेऽपि ज्येष्ठो न देयः, ज्येष्ठेन जातमात्रेण पुत्रीभवति मानव इति तस्यैव पुत्रकार्यकरणे मुख्यत्वात्। पुत्रप्रतिग्रहप्रकारश्च पुत्रं प्रतिगृहीष्यन् बन्धूनाहूय राजनि चावेद्य निवेशनमध्ये व्याहृतिर्हुत्वा अदूरबान्धवं बन्धुसन्निकृष्टएव प्रतिगृह्णीयादिति वसिष्ठेनोक्तः अदूरबान्धवमित्यस्य च देशभाषाविप्रकृष्टस्य प्रतिषेधः एवं क्रीतस्वयंदत्तकृत्रिमेष्वपि योजनीयम् समानन्यायत्वात्॥

क्रीतस्तु पुत्रस्ताभ्यां मातापितृभ्यां मातापित्रा वा विक्रीतः पुत्रवत्, सचैकं ज्येष्ठञ्च पुत्रं वर्जयित्वा आपदि सवर्ण इत्येव। यत्तु मनुनोक्तम्—क्रीणीयाद्यस्त्वपत्यार्थं मातापित्रोर्यमन्तिकात् स क्रीतकसुतस्तस्य सदृशोऽसदृशोऽपिवेति। तदगुणैः सदृशोऽसदृशोवेति व्याख्येयम् न जात्या, सजातीयेष्वयं प्रोक्त इत्युपसंहारात्। कृत्रिमः स्यात् स्वयङ्कृतः, कृत्रिमस्तु पुत्रः स्वयं पुत्रार्थिना धनक्षेत्रप्रदर्शनादिप्रलोभनैः पुत्रीकृतो, मातापितृविहीनस्तत्सद्भावे तत्परतन्त्रत्वात्। दत्तात्मातु पुत्रो यो मातापितृविहीनस्ताभ्यां त्यक्तोवा तवाहं पुत्रोभवामीति स्वयं दत्तस्समुपगतः, सहोढजस्तु, गर्भस्थितो गर्भिण्यां परिणीतायां यः, स वोढुः पुत्रः॥

अपविद्धो मातापितृभ्यामुत्सृष्टो यो गृह्यते स गृहीतुः पुत्रः सर्वत्र सवर्ण इत्येव। एवं मुख्यामुख्यपुत्रानुक्त्वा तेषां दायग्रहणे क्रममाह।

पिण्डदोंऽशहरश्चेषां पूर्व्वाभावे परः परः ।

एतेषां पूर्व्वोक्तानां पुत्राणां द्वादशानां पूर्व्वस्य पूर्व्वस्याभावे उत्तरः पिण्डदः श्राद्धदोंऽशहरो वेदितव्यः । औरसपौत्रिकेयसमवाये औरसस्यैव धनग्रहणं प्राप्ते मनुरपवादमाह, पुत्रिकायां कृतायान्तु यदा पुत्रो न जायते समस्तत्र विभागःस्यात् ज्येष्ठता नास्ति हि स्त्रिया इति । अन्येषामपि पूर्व्वस्मिन् पूर्व्वस्मिन् सत्यप्युत्तरेषां पुत्राणां चतुर्थांशभागित्वमुक्तं वशिष्ठेन, यस्मिंश्चेत् प्रतिगृहीते औरस उत्पद्येत चतुर्भागभागी स्यात् दत्तक इति दत्तकग्रहणं क्रीतकृत्रिमादीनां प्रदर्शनार्थम् पुत्रीकरणाविशेषात् । तथाच कात्यायनः—उत्पन्नेत्वौरसे पुत्रेचतुर्थांशहराः सुताः सवर्णा असवर्णास्तु ग्रासाच्छादनभाजना इति सवर्णा दत्तकक्षेत्रजादयस्ते सत्यौरसे चतुर्थांशहराः । असवर्णा कानीनगूढ़ोत्पन्नसहोढजपौनर्भवा स्ते त्वौरसे सति न चतुर्थांशहराः किन्तु ग्रासाच्छादनभाजनाः; यदपि विष्णुवचनम् "अप्रशस्ता तु कानीनगूढोत्पन्नसहोढजाः पौनर्भवश्च नैवैते पिण्डरिक्थांशभागिन" इति । तदप्यौरसे सति चतुर्थांशनिषेधपरमेव औरसाद्यभावेतु कानीनादीनामपि सकलपित्र्यधनग्रहणमस्त्येव—पूर्व्वाभावे परः पर इति वचनात् । यदपि मनुवचनम् "एक एवौरस पुत्रः पित्र्यस्य च सुतः प्रभुः शेषाणामानृशंस्यार्थं प्रदद्यात्तु प्रजीवन" मिति । तदपि दत्तकादीना मौरसप्रतिकूलत्वे निर्गुणत्वे च वेदितव्यम् । तत्र क्षेत्रजस्यैव विशेषो दर्शितस्तेनैव षष्ठं तु क्षेत्रजस्यांशं प्रदद्यात् पैतृकाद्धनात् औरसो विभजन्दायं पित्र्यं पञ्चममेवचेति । प्रतिकूलत्वनिर्गुणत्वसमुच्चये षष्ठमंशम्, एकतरसद्भावे पञ्चममिति विवेक्तव्यं । यदपि मनुना—पुत्राणां षट्कद्वयमुपन्यस्य पूर्व्वषट्कस्य दायादबान्धवत्वमुक्त मुत्तरषट्कस्यादायादबान्धवत्वमुक्तम् । औरसः क्षेत्रजश्चैव दत्तः कृत्रिम एवच गूढोत्पन्नोपविद्धश्च दायादा बान्धवाश्च षट्, कानीनश्च सहोढश्च क्रीतः पौनर्भवस्तथा स्वयं दत्तश्च शौद्रश्च षडदायादबान्धवा इति । तदपि स्वपितृसपिण्डसमानोदकानां सन्निहितरिक्थहरान्तराभावे पूर्व्वषट्कस्य तद्रिक्थहरत्वमुत्तरषट्कस्य तु तन्नास्ति । बान्धवत्वं पुनः समानगोत्रत्वेन चोदकप्रदानादिकार्थ्यकरत्वं वर्गद्वयस्यापि सममेवेति व्याख्येयम् । गोत्ररिक्थे जनयितुर्नभजेद्दत्रिमः सुतः गोत्ररिक्थानुगः पिण्डोव्यपैति ददतः स्वधेत्यत्र दत्रिमग्रहणस्य पुत्रप्रतिनिधिप्रदर्शनार्थत्वात् । पितृधनहारित्वन्तु पूर्व्वस्य पूर्व्वस्याभावे सर्व्वेषामविशिष्टम् । न भ्रातरो न पितरः पुत्रा रिक्थहराः पितुरित्यौरसव्यतिरिक्तानां पुत्रप्रतिनिधीनां सर्व्वेषां रिक्थहारित्वप्रतिपादनपरत्वात् औरसस्य एक एवौरसः पुत्रः पित्र्यस्य वसुनः प्रभुरित्यनेनैव रिक्थभाक् तस्योक्तत्वात् । दायादशब्दस्य दायादानपि दापयेदित्यादौ पुत्रव्यति-

रिक्तरिक्थभाग्विषयत्वेनप्रसिद्धत्वाच्च। वासिष्ठादिषु वर्गद्वयेपि कस्यचिद्व्यत्ययेन पाठो गुणवदगुणवद्विषयोवेदितव्यः। गौतमीये तु पौत्रिके यस्य दशमत्वेन पाठो विजातीयविषयः, तस्मात् स्थितमेतत्पूर्व्वपूर्व्वाभावे परः परोऽंशभागिति। यत्तु भ्रातृणामेकजातानामेकश्चेत् पुत्रवान् भवेत् सर्व्वे ते तेन पुत्रेण पुत्रिणो मनुरब्रवीदिति तदपि भ्रातृपुत्रस्य पुत्रीकरणसम्भवेऽन्येषां पुत्रीकरणनिषेधार्थम्। न पुनः पुत्रत्वप्रतिपादनाय तत्सुतो गोत्रजोबन्धुरित्यनेन विरोधात्॥ इदानी मुक्तोपसंहारव्याजेन तत्रैव नियममाह—

सजातीयेष्वयं प्रोक्तस्तनयेषु मया विधिः॥ १३५

समानजातीयेष्वेव पुत्रेषु अयं पूर्व्वाभावे परः पर इत्युक्तो विधिः न भिन्नजातीयेषु तत्र च कानीनगूढोत्पन्नसहोढपौनर्भवाणां सवर्णत्वं जनकद्वारेण न स्वरूपेण तेषां वर्णजातिलक्षणाभावस्वीकृतत्वात्। तथानुलोमजानां मूर्द्धावसिक्तादीनामौरसेष्वन्तर्भावात्तेषामप्यभावे क्षेत्रजादीनां दायहरत्वं वोद्धव्यम्। शूद्रापुत्रस्त्वौरसोऽपि कृत्स्नं भागमन्याभावेऽपि न लभते। यथाह मनुः—यद्यपि स्यात्तु सत्पुत्रो यद्यपुत्रोपि वा भवेत् नाधिकं दशमाद्दद्याच्छूद्रापुत्राय धर्मतः इति। यदि सत्पुत्रो विद्यमानद्विजातिपुत्रो यद्यपुत्रोऽविद्यमानद्विजातिपुत्रो वा स्यात्तस्मिन् मृते क्षेत्रजादिर्व्वाऽन्योवा सपिण्डः शूद्रापुत्राय तद्धनाद्दशमांशादधिकं न दद्यादित्यस्मादेव क्षत्रियावैश्यापुत्रयोः सवर्णापुत्राभावे सकलधनग्रहणं गम्यते। अधुना शूद्रधनविभागे विशेषमाह॥

जातोऽपि दास्यां शूद्रेण कामतोंऽशहरो भवेत्।

मृते पितरि कुर्युस्तं भ्रातरस्त्वर्द्धभागिकम्।

अभ्रातृको हरेत् सर्व्वं दुहितॄणां सुतादृते॥ १३६

शूद्रेण दास्यामुत्पन्नः पुत्रः कामतः पितुरिच्छया भागं लभते। पितुरूर्द्ध्वन्तु यदि परिणीताः पुत्राः सन्ति ते भ्रातरस्तं दासीपुत्रं अर्द्धभागिनं कुर्य्युः स्वभागादर्द्धं दद्युरित्यर्थः। अथ परिणीतापुत्रा न सन्ति तदा कृत्स्नं धनं दासीपुत्रोगृह्णीयात्, यदि परिणीता दुहितर स्तत्पुत्रा वा न सन्ति तत्सद्भावेत्वर्द्धभागिक एव दासीपुत्रः; अत्र च शूद्रग्रहणाद्द्विजातिना दास्यामुत्पन्नः पितुरिच्छयाप्यंशं न लभते नाप्यर्द्धम् दूरतएव कृत्स्नं किन्त्वनुकूलश्चेज्जीवनमात्रं लभते॥

पत्नीदुर्हितरश्चैव पितरौ भ्रातरस्तथा।

तत्सुता गोत्रजा बन्धुशिष्यसब्रह्मचारिणः॥ १३७

एषामभावे पूर्व्वस्य धनभागुत्तरोत्तरः ।
स्वर्यातस्य ह्यपुत्रस्य सर्व्ववर्णेष्वयं विधिः ॥ १३८ *

मुख्यगौणसुता दायं गृह्णन्तीति निरूपितम् तेषामभावे सर्व्वेषां दायादक्रम उच्यते। पूर्व्वोक्ता द्वादशपुत्रा यस्य न सन्ति असावपुत्रः तस्यापुत्रस्य स्वर्यातस्य परलोकं गतस्य धनभाक् धनग्राही एषां पत्न्यादीनामनुक्रान्तानां मध्ये पूर्व्वस्य पूर्व्वस्याभाव उत्तर उत्तरो धनभागिति सम्बन्धः। सर्व्वेषु मूर्द्धावसिक्तादिषु अनुलोमजेषु सुतादिषु प्रतिलोमजेषु च वर्णेषु च ब्राह्मणादिषु अयं दायग्रहणविधिर्द्दायग्रहणक्रमो वेदितव्यः। तत्र प्रथमं पत्नी धनभाक् पत्नी विवाहसंस्कृता पत्युर्नो यज्ञसंयोगे इति स्मरणात्। एकवचनं च जात्यभिप्रायेण। अतश्च बह्व्यश्चेत् समानजातीया विजातीयाश्च यथांशं विभज्य धन गृह्णन्ति। वृद्धमनुरपि पत्न्याःसमग्रधनसम्बन्धं वक्ति—अपुत्रा शयनं भर्त्तुः पालयन्ती व्रते स्थिता पत्न्येव दद्यात्तं पिण्डं कृत्स्नमंशं लभेतचेति। वृहद्विष्णुरपि, अपुत्रधनं पत्न्यभिगामि, तदभावे दुहितृगामि, तदभावे पितृगामि तदभावे मातृगामीति। कात्यायनोऽपि, पत्नी पत्युर्धनहारी या स्यादव्यभिचारिणी तदभावेतु दुहिता यद्यनूढा भवेत्तदेति। तथा अपुत्रस्याथकुलजा पत्नी दुहितरोपि वा, तदभावे पिता माता भ्राता पुत्रश्च कीर्त्तिता इति। वृहस्पतिरपि—कुल्येषु विद्यमानेषु पितृभ्रातृसनाभिषु असुतस्य प्रमीतस्य पत्नी तद्भागहारिणी। एतद्विरुद्धानीव वाक्यानि लभ्यन्ते। भ्रातृणामप्रजाः प्रेयात् कश्चिच्चेत्प्रव्रजेत वा विभजेरन् धनं तस्य शेषास्ते स्त्रीधनं विना। भरणञ्चास्य कुर्व्वीरन् स्त्रीणामाजीवन क्षयात् रक्षन्ति शय्यां भर्त्तुश्चेदाच्छिन्दुरितरासुत्विति। पत्नीसद्भावेपि भ्रातृणां धनग्रहणम् पत्नीनाञ्च भरणमात्रं नारदेनोक्तम्। मनुना तु—पिता हरेदपुत्रस्य रिक्थं भ्रातर एवचेत्यपुत्रस्य धनं पितु र्भ्रातुर्व्वेति दर्शितम्। तथा अनपत्यस्य पुत्रस्य माता दायमवाप्नुयात् मातर्य्यपिच वृत्तायां पितुर्म्माता हरेद्धनमिति मातुः पितामह्याश्च धनसम्बन्धी दर्शितः। शङ्खेनापिस्वर्यातस्य ह्यपुत्रस्य भ्रातृगामि द्रव्यं, तदभावे पितरौ हरेयातां ज्येष्ठा वा पत्नीति भ्रातॄणां पित्रोर्ज्येष्ठायाश्च पत्न्याः क्रमेण धनसम्बन्धो दर्शितः। कात्यायनेनापि—विभक्ते संस्थिते द्रव्यं पुत्राभावे पिता हरेत् भ्राता वा जननी वाथ माता वा तत्पितुः क्रमादित्येवमादीनां विरुद्धार्थानां वाक्यानां धारेश्वरेण व्यवस्था दर्शिता। पत्नी गृह्णीयादित्येतद्वचनजातं विभक्तभ्रातृस्त्रीविषयम्। सा च यदिनियोगार्थिनी भवति कुत एतत् नियोगसव्यपेक्षायाः पत्न्या धनहरणं न

* Colebrooke numbers these verses as 136—137

स्वतन्त्राया इति। पिता हरेदपुत्रस्येत्यादिवचनात्तत्र व्यवस्थाकारणं वक्तव्यम्। नान्यद्व्यवस्थाकारणमस्तीति गौतमवचनाच्च पिण्डगोत्रर्षिसम्बन्धा रिक्थं भजेरन् स्त्री वाऽनपत्यस्य वीजं लिप्सेतेति अस्यार्थः। पिण्डगोत्रर्षिसम्बन्धा अनपत्यस्य रिक्थं भजेरन् स्त्री वा रिक्थं भजेत यदि वीजं लिप्सेतेति। मनुरपि—धनं यो विभृयाद्भ्रातुर्मृतस्य स्त्रियमेव वा सोऽपत्यं भ्रातुरुत्पाद्य दद्यात्तस्यैव तद्धनमिति। अनेनैतद्दर्शयति विभक्तधनेऽपि भ्रातर्य्युपरतेऽपत्यद्वारेणैव धनसम्बन्धो नान्यथेति। तथा विभक्तधनेपि कनीयान् ज्येष्ठभार्य्यायां पुत्रमुत्पादयेत् यदि, समस्तत्र विभागः स्यादिति धर्म्मो व्यवस्थित इति। तथा वशिष्ठोपि—रिक्थलोभान्नास्ति नियोग इति। रिक्थलोभान्नियोगं प्रतिषेधन् नियोगद्वारकएव पत्न्याधनसम्बन्धो नान्यथेति दर्शयति। नियोगाभावेतु पत्न्या भरणमात्रमेव नारदवचनात्। भरणञ्चास्य कुर्वीरन् स्त्रीणामाजीवनक्षयादिति। योगीश्वरेणापि किल वक्ष्यते—अपुत्रा योषितश्चैषां भर्त्तव्याः साधुवृत्तयः निर्व्वास्या व्यभिचारिण्यः प्रतिकूलास्तथैवचेति। अपिच द्विजातिधनस्य यज्ञार्थत्वात् स्त्रीणाञ्च यज्ञेऽनधिकाराद्धनग्रहणमयुक्तम्। तथाच केनापि स्मृतं—यज्ञार्थं ज्ञानमुत्पन्नं तत्रानधिकृतास्तु ये, अरिक्थभाजस्ते सर्व्वे ग्रासाच्छादनभाजनाः ; यज्ञार्थं विहितं वित्तं तस्मात्तद्विनियोजयेत्, स्थानेषु धर्म्मजुष्टेषु न स्त्रीमूर्खविधर्म्मिष्विति। तदनुपपन्नम्। पत्नीदुहितरइत्यत्र विनियोगस्याप्रतीतेरप्रस्तुतत्वाच्च। अपिच इदमत्र वक्तव्यम्—पत्नीधनग्रहणे नियोगो वा निमित्तं, तदुत्पन्नमपत्यं वा तत्र नियोगस्यैव निमित्तत्वे अनुत्पादितपुत्राया अपि धनसम्बन्धः प्राप्नोति, उत्पन्नस्य पुत्रस्य धनसम्बन्धो न प्राप्नोति। अथ तदपत्यस्यैव निमित्तत्वं तथा सति पुत्रस्यैव धनसम्बन्धात् पत्नीति नारब्धव्यम्। अथ स्त्रीणां पतिद्वारको धनसम्बन्धः पुत्रद्वारको वा नान्यथेति मन्तव्यं, तदप्यसत्, अध्यग्न्यध्यावाहनिकं दत्तञ्च प्रीतिकर्म्मणि भ्रातृमातृपितृप्राप्तं षड्विधं स्त्रीधनं स्मृतमित्यादिविरोधात्। किञ्च—सर्व्वपुत्राभावे पत्नीदुहितर इत्यारब्धं तत्र नियुक्ताया धनसम्बन्धं वदता क्षेत्रजस्यैव धनसम्बन्ध उक्तो भवति। स च प्रागेवाभिहित इत्यपुत्रप्रकरणे पत्नीति नारब्धव्यम्। अथ पिण्डगोत्रर्षिसम्बन्धा रिक्थं भजेरन् स्त्री वाऽनपत्यस्य वीजं लिप्सेतेति गौतमवचनान्नियुक्ताया इति धनसम्बन्ध इति तदप्यसत्। न हि यदि वीजं लिप्सेत तदाऽनपत्यस्य स्त्री धनं गृह्णीयादित्ययमर्थोऽस्मात् प्रतीयते। किन्त्वनपत्यस्य धनं पिण्डगोत्रर्षिसम्बन्धा भजेरन् स्त्री च सा स्त्री वीजं वा लिप्सेत संयता वा भवेदिति। तस्या धर्म्मान्तरोपदेशः वा शब्दस्य पक्षान्तरवचनत्वेन यथार्थाप्रतीतेः। अपिच संयताया एव धनग्रहणं युक्तं न नियुक्तायाः स्मृतिलोकनिन्दितायाः। अपुत्रा शयनं भर्त्तुः पालयन्ती व्रते स्थिता पत्न्येव दद्यात्तत्

पिण्डं ज्ञात्वसंशं लभेतचेति संयताया धनग्रहणमुक्तं। तथा नियोगश्च निन्दितो मनुना नान्यस्मिन् विधवा नारी नियोक्तव्या द्विजातिभिः, अन्यस्मिन् हि नियुञ्जाना धर्मं हन्युः सनातनमिति। यत्तु वसिष्ठवचनम्—रिक्थलोभान्नास्ति नियोग इति। तदविभक्ते संसृष्टिनि वा भर्त्तरि प्रेते तस्या धनसम्बन्धो नास्तीति स्वापत्यस्य धनसम्बन्धार्थं नियोगो न कर्त्तव्य इति व्याख्येयम्। यदपि नारदवचनम्—भरणञ्चास्य कुर्वीरन् स्त्रीणामाजीवनक्षयादिति तदपि संसृष्टानां तु यो भागस्तेषामेव स इष्यत इति संसृष्टानां प्रस्तुतत्वात् तत् स्त्रीणामनपत्यानां भरणमात्रप्रतिपादनपरम्, न च भ्रातृणामप्रजाः प्रेयादित्येतस्य संसृष्टिविषयत्वे संसृष्टानान्तु यो भाग इत्यनेन पौनरुक्त्यमाशङ्कनीयम्। यतः पूर्व्वोक्तविवरणेन स्त्रीधनस्याविभाज्यत्व तत्स्त्रीणाञ्च भरणमात्रं विधीयते। यदप्यपुत्रा योषितश्चैषामित्यादि वचनन्तत् क्लीवादिस्त्री-विषयमिति वक्ष्यते। यत्तु द्विजातिधनस्य यज्ञार्थत्वात् स्त्रीणाञ्च यज्ञेऽनधिकाराच्च धनग्रहणमयुक्तमिति तदसत् सर्व्वस्य द्रव्यजातस्य यज्ञार्थत्वे दानहोमाद्यसिद्धेः। अथ यज्ञशब्दस्य धर्म्मोपलक्षणत्वात् दानहोमादीनामपि धर्म्मत्वात्तदर्थत्वमविरुद्धमिति मतं। एवं तर्ह्यर्थकामयोर्धनसाध्ययोरसिद्धिरेव स्यात्। तथा सति धर्म्ममर्थञ्च कामञ्च यथाशक्ति न हापयेत्। तथा न पूर्वाह्नमध्यंदिनापराह्णानफलान् न कुर्य्याद्यथाशक्ति धर्म्मार्थकामेभ्यः; तथा न तथैतानि शक्यन्ते संनियन्तुमसेवयेत्यादि याज्ञवल्क्य-गौतममनुवचनविरोधः। अपिच—धनस्य यज्ञार्थत्वे हिरण्यं धार्य्यमिति हिरण्य-साधारणस्य क्रत्वर्थतानिराकरणेन पुरुषार्थत्वमुक्तम्। तत्प्रत्युद्धृतं स्यात्। किञ्च—यज्ञशब्दस्य धर्म्मोपलक्षणपरत्वे स्त्रीणामपि पूर्त्तकर्म्माधिकाराद्धनग्रहणं युक्ततरम्। यत्तु पारतन्त्र्यवचनं—न स्त्री स्वातन्त्र्यमर्हतीत्यादि तदस्तु, पारतन्त्र्यं धनस्वीकारे तु को विरोधः, कथं तर्हि यज्ञार्थंधनमुत्पन्नमित्यादिवचनम्। उच्यते यज्ञार्थमेवार्ज्जितं यद्धनं तदयज्ञ एव विनियोक्तव्यं पुत्रादिभिरपीत्येवं, परं तत् यज्ञार्थं लब्धमदद्भासः काकोऽपि वा भवेदिति दोषश्रवणञ्च पुत्रादिष्वप्यविशेषात्। यदपि कात्यायने-नोक्तम्—अदायिकं राजगामि योषिद्भृत्यौर्द्ध्वदैहिकम् अपास्य श्रोत्रियद्रव्यं श्रोत्रियेभ्यस्तदर्पयेदिति। अदायिकं दायादरहितं यद्धनं तद्राजगामि राज्ञो भवति योषि-द्भृत्यौर्द्ध्वदैहिकमपास्य तत्स्त्रीणामशनाच्छादनोपयुक्तम् और्द्ध्वदैहिकं धनिनः श्राद्धा-द्युपयुक्तञ्चापास्य परिहृत्य राजगामि भवतीति सम्बन्धः। अस्यापवादः श्रोत्रियद्रव्यञ्च योषिद्भृत्यौर्द्ध्वदैहिकमपास्य श्रोत्रियायोपपादयेदिति। एतदप्यवरुद्धस्त्रीविषयम् योषिद्ग्रहणात्। नारदवचनञ्च—अन्यत्र ब्राह्मणात् किन्तु राजा धर्म्मपरायणः तत्स्त्रीणां जीवनं दद्यादेष दायविधिः स्मृत इत्यवरुद्धस्त्रीविषयमेव। स्त्रीशब्दश्रवणात्

इह तु पत्नीशब्दादूढायाः संयताया धनग्रहणमविरुद्धम्। तस्माद्विभक्ता संसृष्टिन्यपुत्रे स्वर्य्याते पत्नी धनं प्रथमं गृह्णातीत्ययमर्थः सिद्धो भवति विभागस्योक्तत्वात् संसृष्टिनां वक्ष्यमाणत्वात् एतेनाल्पधनविषयत्वं श्रीकरादिभिरुक्तं निरस्तं वेदितव्यं। तथाच्चौरसेषु पुत्रेषु सत्स्वपि जीवद्विभागे मृजीवद्विभागे पत्न्याः पुत्रसमांशग्रहणमुक्तं। यदि कुर्य्यात् समानंशान् पत्न्यः कार्य्याः समांशिकाः पितुरूर्ध्वं विभजतां माताप्यंशं समं हरेदिति च। तथा सत्यपुत्रस्य स्वर्य्यातस्य धनं पत्नी भरणादतिरिक्तं न लभत इति व्यामोहमात्रं। अथ पत्न्यः कार्य्याः समांशिका इत्यत्र माताऽप्यंशं समं हरेदित्यत्र च जीवनोपयुक्तमेव धनं स्त्री हरतीति तदसत्। अंशशब्दस्य समशब्दस्य चानर्थक्यप्रसङ्गात्, स्यान्मतं, वहुधने जीवनोपयुक्तं धनं गृह्णाति अल्पेतु पुत्रांशसममंशं गृह्णातीति। तच्च न, विधिवैषम्यप्रसङ्गात्। तथाहि पत्न्यः कार्य्याः समांशिका माताप्यंशं समंहरेदिति च वहुधने जीवनमात्रोपयुक्तं वाक्यान्तरमपेक्ष्य प्रतिपादयति अल्पधनेतु पुत्रांशसममंशं प्रतिपादयतीति। तथा चातुर्म्मास्येषु द्वयोः प्रणयन्तीत्यत्र पूर्व्वपक्षिणा सौमिकप्रणयनातिदेशे हेतुत्वेन वैश्वदेवउत्तरवेदिमुपकिरन्ति न शुनासीरिय इत्युत्तरवेदिप्रतिषेधे दर्शितेराद्धान्तैकदेशिना न सौमिकप्रणयनातिदेशप्राप्ताया उत्तरवेद्याः प्रथमोत्तरयोः पर्व्वणोरयं प्रतिषेधः। किन्तु उपात्र वपन्तीति प्राकरणिकेन वचनेन प्राप्ताया उत्तरवेद्याः प्रतिषेधोऽयमित्यभिहिते पुनः पूर्व्वपक्षिणो पात्र वपन्तीति प्रथमोत्तरयोः पर्व्वणोः प्रतिषेधमपेक्ष्य पाक्षिकीमुत्तरवेदिं प्रापयति, मध्यमयोस्तु निरपेक्षमेव नित्यवदुत्तरवेदिं प्रतिपादयतीति विधिवैषम्यं दर्शितं। राद्धान्तेऽपि विधिवैषम्यतया प्रथमोत्तरयोः पर्व्वणोरुत्तरवेदिप्रतिषेधोनित्यानुवादो द्वयोः प्रणयन्तीत्याद्यर्थवादपर्य्यालोचनयोपात्र वपन्तीति मध्यमयोरेव वरुणप्रघाससाकमेध पर्व्वणोरुत्तरवेदिं विधत्त इति दर्शितं। यदपि मतं, पिता हरेदपुत्रस्य रिक्थं भ्रातरएववेति मनुस्मरणात्। तथा स्वर्यातस्य ह्यपुत्रस्य भ्रातृगामि द्रव्यं तदभावे पितरौ हरेयातां ज्येष्ठा वा पत्नीति शङ्खस्मरणाच्च, अपुत्रधनं भ्रातृगामीति प्राप्तं भरणञ्चास्य कुर्व्वीरन् स्त्रीणामाजीवनक्षयादित्यादिवचनाच्च। भरणोपयुक्तं धनं पत्नी लभत इत्यपि स्थितम्। एवं स्थिते वहुधने अपुत्रे स्वर्य्याते भरणोपयुक्तं पत्नी गृह्णाति, शेषञ्च भ्रातरः। यदातु पत्नीभरणमात्रोपयुक्तमेव द्रव्यमस्ति ततोन्यूनं वा तदा किं पत्न्येव गृह्णात्युत भ्रातरोऽपीति विरोधे पूर्व्वबलीयस्त्वज्ञापनार्थं पत्नी दुहितर इत्यारब्धमिति। तदप्यत्र भगवानाचार्य्यो न मृष्यति, यतः, पिता हरेदपुत्रस्य रिक्थं भ्रातर एव वेति विकल्प स्मरणान्नेदं क्रमपरं वचनं पितुर्धनग्रहणेऽधिकारपरप्रदर्शनमात्रपरं तथासत्यपि पत्न्यादिग्रहणे घटत इति व्याचक्षते। शङ्खवचनमपि संसृष्ट

मातृविषयमिति—अपि चाल्पविषयत्वमस्माद्वचनात् प्रकरणाद्वानावगम्यते। धनभागुत्तरोत्तर इत्यस्य च पत्नी दुहितर इति विषयद्वये वाक्यान्तरमपेक्ष्याल्पधनविषयत्वं पित्रादिषु तु धनमात्र विषयत्वमिति पूर्व्वोक्तविधिवैषम्यं तदवस्थमेवेति यत् किञ्चिदेतत्। यत्तु हारीतवचनं। विधवा यौवनस्था चेन्नारी भवति कर्कशा आयुषः क्षपणार्थन्तु दातव्यं जीवनं तदेति। तदपि शङ्कितव्यभिचारायाः सकलधनग्रहण निषेधपरं। अस्मादेव वचनादनाशङ्कितव्यभिचारायाः सकलधनग्रहणं गम्यते, एतदेवाभिप्रेत्योक्तं शङ्खेन—ज्येष्ठा वा पत्नीति ज्येष्ठा गुणज्येष्ठा अनाशङ्कितव्यभिचारा सा सकलधनं गृहीत्वाऽन्यां कर्कशामपि मातृवत् पालयतीति सर्व्वमनवद्यम्। तस्मादपुत्रस्य स्वर्य्यातस्य विभक्तस्याऽसंसृष्टिनोधनं परिणीता स्त्री संयता सकलं गृह्णातीति स्थितम्।

तदभावे दुहितरः, दुहितर इति बहुवचनं। समानजातीयानामसमानजातीयानां च समविषमांशप्राप्त्यर्थं। तथाच कात्यायनः। पत्नी भर्त्तुर्धनहरी या स्यादव्यभिचारिणी, तदभावे तु दुहिता यद्यनूढा भवेत्तदेति। बृहस्पतिरपि—भर्त्तुर्धनहरी पत्नी तां विना दुहिता स्मृता। अङ्गादङ्गात् सम्भवति पुत्रवद्दुहिता नृणां। तस्मात् पितृधनं त्वन्यः कथं गृह्णीत मानव इति। तत्र चोढानूढासमवायेऽनूढैव गृह्णाति, तदभावे तु दुहिता यद्यनूढा भवेत्तदेति विशेषस्मरणात्। तथा प्रतिष्ठिताप्रतिष्ठितसमवाये अप्रतिष्ठितैव, तदभावे प्रतिष्ठिता स्त्रीधनं दुहितॄणामप्रत्तानामप्रतिष्ठितानाञ्चेति गौतमवचनस्य पितृधनेऽपि समानत्वात् नचैतत्पुत्रिकाविषयमिति मन्तव्यं। तत्समः पुत्रिकासुत इति पुत्रिकायास्तत्सुतस्य चौरससमत्वेन पृथक्करणेऽभिधानात्, च शब्दाद्दुहितृभावे दौहित्रे धनभाक् यथाह विष्णुः—अपुत्रपौत्रसन्ताने दौहित्रा धनमाप्नुयुः। पूर्व्वेषान्तु स्वधाकारे पौत्रा दौहित्रकामता" इति। मनुरपि—अकृता वा कृता वापि यं विन्देत् सदृशात् सुतं पौत्री मातामहस्तेन दद्यात् पिण्डं हरेद्धनमिति।

तदभावे पितरौ मातापितरौ धनभाजौ। यद्यपि युगपदधिकरणवचनतायां द्वन्द्वस्मरणात्, तदपवादत्वादेकशेषस्य धनग्रहणे पित्रोः क्रमो न प्रतीयते, तथापि विग्रहवाक्ये मातृशब्दस्य पूर्व्वनिपातादेकशेषाभावपक्षे च मातापितराविति मातृशब्दस्य पूर्व्वश्रवणात् पाठक्रमादेवार्थक्रमावगमाद्धनसम्बन्धेपि क्रमापेक्षायां प्रतीतक्रमानुरोधेनैव प्रथमं माता धनभाक्। तदभावे पितेति गम्यते। किञ्च—पिता पुत्रान्तरेष्वपि साधारणो माता तु न साधारणीति प्रत्यासत्त्यतिशयादनन्तरः सपिण्डाद्यस्तस्य तस्य धनं भवेदिति वचनान्मातुरेव प्रथमं धनग्रहणं युक्तम्; न च सपिण्डेष्वेव प्रत्यासत्तिर्नियामिका अपि तु समानोदकादिष्वप्यविशेषेण

धनग्रहणे प्राप्ते प्रत्यासत्तिरेव नियामिकेत्यस्मादेव वचनादवगम्यत इति। माता-पित्रोर्मातुरेव प्रत्यासत्त्यतिशयाद्धनग्रहणं युक्ततरम्। तदभावे पिता धनभाक्।

पित्रभावे भ्रातरो धनभाजः। तथाच मनुः—पिता हरेदपुत्रस्य रिक्थं भ्रातर एव चेति। यत्पुनर्धारेश्वरेणोक्तम्—अनपत्यस्य पुत्रस्य माता दायमवाप्नुयात् मातर्यपि च वृत्तायां पितुर्माता हरेद्धनमिति मनुवचनाज्जीवत्यपि पितरि मातरि वृत्तायां पितुर्माता पितामही धनं हरेन्न पिता। यतः पितृगृहीतं धनं विजातीयेष्वपि पुत्रेषु गच्छति। पितामहीगृहीतं तु सजातीयेष्वेव गच्छतीति पितामह्येव गृह्णातीति। एतदप्याचार्यो नानुमन्यते। विजातीयपुत्राणामपि धन-ग्रहणस्योक्तत्वात्। चतुस्त्रिद्व्येकभागाः स्युरित्यादिनेति। यत्पुनरहार्य्यं ब्राह्मणद्रव्यं राज्ञा नित्यमिति स्थितिरिति मनुस्मरणम्, तन्नृपाभिप्रायं न तु पुत्राभिप्रायं। भ्रातृष्वपि सोदराः प्रथमं गृह्णीयुः भिन्नोदराणां मातृविप्रकर्षात्। अनन्तरः सपिण्डाद्यस्तस्य तस्य धनं भवेदिति स्मरणात्। सोदराणामभावे भिन्नोदरा धनभाजः। भ्रातृणा-मप्यभावे तत्पुत्राः पितृक्रमेण धनभाजः। भ्रातृभ्रातृपुत्रसमवाये भ्रातृपुत्राणाम-नधिकारः भ्रात्रभावे भ्रातृपुत्राणामधिकारवचनात्। यदा त्वपुत्रे भ्रातरि स्वर्याते तद्भ्रातृणामविशेषेण धनसम्बन्धे जाते भ्रातृधनविभागात् प्रागेव यदि कश्चिद्भ्राता मृतः तदा तत्पुत्राणां पितृतोऽधिकारे प्राप्ते तेषां भ्रातृणां च विभज्य ग्रहणे पितृतोभागकल्पनेति युक्तम्। भ्रातृपुत्राणामप्यभावे गोत्रजा धनभाजः। गोत्रजाः पितामहीसपिण्डाः समानोदकाश्च तत्र पितामही प्रथमं धनभाक्। मातर्य्यपि च वृत्तायां पितुर्माता धनं हरेदिति मात्रनन्तरं पितामह्या धनग्रहणे प्राप्ते पित्रादीनां भ्रातृसुतपर्य्यन्तानां बद्धक्रमत्वेन मध्ये तु प्रवेशाभावात् पितुर्माताधनं हरेदित्यस्य वचनस्य धनग्रहणाधिकारप्राप्तिमात्रपरत्वादुत्कर्षे तत्सुतानन्तरं पितामही गृह्णा-तीत्यविरोधः। पितामह्याश्चाभावे समानगोत्रजाः सपिण्डाः पितामहादयो धनभाजः, भिन्नगोत्राणां सपिण्डानां बन्धुशब्देन ग्रहणात्। तत्र च पितृसन्तानाभावे पितामही पितामहः पितृव्यास्तत्पुत्राश्च क्रमेण धनभाजः, पितामहसन्तानाभावे प्रपितामही प्रपितामहस्तत्पुत्रास्तत्सुतवश्चेत्येवमासप्तमात् समानगोत्राणां सपिण्डानां धनग्रहणं वेदितव्यम्। तेषामभावे समानोदकानान्धनसम्बन्धः ते च सपिण्डानामुपरिसप्त वेदितव्याः, जन्मनामज्ञानावधिका वा। यथाह बृहन्मनुः—सपिण्डता तु पुरुषे सप्तमे विनिवर्त्तते, समानोदकभावस्तु निवर्त्तताचतुर्दशात्, जन्मनाम्नोः स्मृतेरेके तत्परं गोत्रमुच्यते इति।

गोत्रजाभावे बन्धवो धनभाजः बन्धवश्चत्रिविधाः—आत्मबन्धवः पितृबन्धवोमातृबन्धवश्चेति। यथोक्तम्—आत्मपितृष्वसुः पुत्रा आत्ममातृष्वसुः सुताः आत्ममातुलपुत्राश्च विज्ञेया आत्मबान्धवाः। पितुः पितृष्वसुः पुत्राः पितुर्मातृष्वसुः सुताः पितुर्मातुलपुत्राश्च विज्ञेयाः पितृबान्धवाः। मातुः पितृष्वसुः पुत्रा मातुर्मातृष्वसुःसुताः मातुर्मातुलपुत्राश्च विज्ञेया मातृबान्धवा इति। तत्र चान्तरङ्गत्वात् प्रथममात्मबन्धवो धनभाजस्तदभावे पितृबन्धवस्तदभावे मातृबन्धव इति क्रमोवेदितव्यः।

बन्धूनामभावे आचार्य्यः। तदभावे शिष्यः। पुत्राभावे यः प्रत्यासन्नः सपिण्डस्तदभावे आचार्य्यः। आचार्य्याभावेऽन्तेवासीत्यापस्तम्बस्मरणात्। शिष्याभावे सब्रह्मचारी धनभाक्। येन सहैकस्मादाचार्य्यादुपनयनाध्ययनतदर्थज्ञानप्राप्तिः स सब्रह्मचारी, तदभावे ब्राह्मणद्रव्यं यः कश्चित् श्रोत्रियो गृह्णीयात्, श्रोत्रिया ब्राह्मणस्यानपत्यस्य रिक्थं भजेरन्निति गौतमस्मरणात्। तदभावे ब्राह्मणमात्रं। यथाह मनुः। सर्व्वेषामप्यभावे तु ब्राह्मणा रिक्थभागिनः। त्रैविद्याः शुचयो दान्तास्तथाधर्म्मो न हीयत इति। न कदाचिदपि ब्राह्मणद्रव्यं राजा गृह्णीयात्। अहार्य्यं ब्राह्मणद्रव्यं राज्ञा नित्यमितिस्थितिरिति मनुवचनात्। नारदेनाप्युक्त—ब्राह्मणार्थस्य तन्नाशे दायादश्चेन्न कश्चन ब्राह्मणायैव दातव्यमेनस्वी स्यान्नृपोऽन्यथेति। क्षत्रियादिधनं सब्रह्मचारिपर्य्यन्तानामभावे राजा हरेत् न ब्राह्मणः। यथाह मनुः—इतरेषान्तु वर्णानां सर्व्वाभावे हरेन्नृप इति। पुत्राः पौत्राश्च दायं गृह्णन्ति तदभावे पत्न्यादय इत्युक्तमिदानीन्तदुभयोरपवादमाह—

वानप्रस्थयतिब्रह्मचारिणां रिक्थभागिनः।
क्रमेणाचार्य्यसच्छिष्यधर्म्मभ्रात्रेकतीर्थिनः॥ १४०

वानप्रस्थस्य यतेर्ब्रह्मचारिणश्च क्रमेण प्रतिलोमक्रमेणाचार्य्यः सच्छिष्योधर्म्मभ्रात्रेकतीर्थौ च रिक्थस्य धनस्य भागिनः ब्रह्मचारी नैष्ठिकः। उपकुर्व्वाणस्य तु धनं मात्रादय एव गृह्णन्ति। नैष्ठिकस्य तु धनं तदपवादत्वेनाचार्य्यो गृह्णातीत्युच्यते। यतेस्तु धनं सच्छिष्यो गृह्णाति। सच्छिष्यः पुनरध्यात्मशास्त्रश्रवणधारणतदर्थानुष्ठानक्षमः। दुर्वृत्तस्याचार्य्यादेरपि भागानर्हत्वात्। वानप्रस्थस्य धनं धर्म्मभ्रात्रेकतीर्थौ गृह्णाति धर्म्मभ्राता प्रतिपन्नभ्राता एकतीर्थौ एकाश्रमी धर्म्मभ्राताचासावेकतीर्थौ च धर्म्मभ्रात्रेकतीर्थौ। एतेषामाचार्य्यादीनामभावे पुत्रादिषु सत्स्वपि एकतीर्थ्येव गृह्णाति। नन्वनंशा श्रमान्तरगताः इति वसिष्ठस्मरणात् आश्रमान्तरगतानां रिक्थसम्बन्धएव नास्ति कुतस्तद्विभागः। न च नैष्ठिकस्य स्वार्जितधनसम्बन्धोयुक्तः प्रतिग्रहादिनिषेधात्। अनिचयोभिक्षुरिति गौतमस्मरणात् भिक्षोरपि

न स्वार्जितधनसम्बन्धसम्भवः। उच्यते। वानप्रस्थस्य तावत् अह्नो मासस्य षण्णां वा तथा सम्वत्सरस्य वा, अर्थस्य निचयं कुर्य्यात् कृतमाश्वयुजे त्यजेत् इति वचनाद्धन-सम्बन्धोऽस्त्येव यतेरपि। कौपीनाच्छादनार्थं वा वासांवै विभृयाद्वसः योगसम्भार-भेदांश्च गृह्णीयात् पादुके तथेत्यादि वचनाद्वस्त्रपुस्तकादिसम्बन्धोऽस्त्येव। नैष्ठिकस्यापि शरीरयात्रार्थं वस्त्रादिसम्बन्धोऽस्त्येवेति तद्विभागकथनं युक्तमेव। इदानीं स्वर्यातस्या-पुत्रस्य पत्न्यादयो धनभाज इत्यस्यापवादमाह—

संसृष्टिनस्तु संसृष्टी सोदरस्य तु सोदरः।

दद्यादपहरेच्चांशं जातस्य च मृतस्य च॥ १४१

विभक्तं धनं पुनर्मिश्रीकृतं संसृष्टं, तदस्यास्तीति संसृष्टी, संसृष्टित्वञ्च न येन केनापि किन्तु पित्रा भ्रात्रा पितृव्येण वा। यथाह बृहस्पतिः—विभक्तो यः पुनः पित्रा भ्रात्रा चैकत्रसंस्थितः पितृव्येनाथ वै प्रीत्या स तत्संसृष्टउच्यत इति। तस्य संसृष्टिनोमृतस्यांशं विभागकाले अविज्ञातगर्भायां पश्चादुत्पन्नस्य पुत्रस्य संसृष्टी दद्यात्। पुत्राभावे संसृष्ट्येव अपहरेत् गृह्णीयात् न पत्न्यादिः। संसृष्टिनस्तु संसृष्टीत्यस्यापवादमाह। संसृष्टिनः संसृष्टी इत्यनुवर्त्तते अतश्च सोदरस्य संसृष्टिनो-मृतस्यांशं सोदरः संसृष्टी संसृष्टानुजातस्य सुतस्य दद्यात् तदभावे अपहरेदिति सम्बन्धः पूर्व्ववत्। एवञ्च सोदरासोदरसंसर्गे सोदरस्यसंसृष्टिनो धनं सोदरएव गृह्णाति न भिन्नोदरः संसृष्ट्यपीति पूर्व्वोक्तस्यापवादः। इदानीं संसृष्टिन्यपुत्रे स्वर्याते संसृष्टिनो भिन्नोदरस्य सोदरस्य चासंसृष्टिनः सद्भावे कस्य धनग्रहणमिति विवक्षायां द्वयोर्विभज्य ग्रहणे कारणमाह—

अन्योदर्य्यस्तु संसृष्टी नान्योदर्य्यो धनं हरेत्।

असंसृष्ट्यपि वादद्यात् संसृष्टो नान्यमातृजः॥ १४२

अन्योदर्य्यः सापत्नोभ्राता संसृष्टी धनं हरेत् न पुनः अन्योदर्य्यो धनं हरेदसंसृष्टी। अनेनान्वयव्यतिरेकाभ्यां अन्योदर्य्यस्य संसृष्टित्वं धनग्रहणे कारणमुक्तं भवति। असंसृष्टीत्येतदुत्तरेणापि सम्बध्यते, अतश्चासंसृष्ट्यपि संसृष्टिनोधनमाददीत। कोसा-वित्यत आह। संसृष्ट इति। संसृष्ट एकोदरसंसृष्टः सोदर इति यावत्। अनेना-संसृष्टस्यापि सोदरस्य धनग्रहणे सोदरत्वं कारणमुक्तम्। संसृष्ट इत्युत्तरेणापि सम्बध्यते तत्र च संसृष्टीत्यर्थः। नान्यमातृजः अत्रैवशब्दाध्याहारेण व्याख्यानं कार्य्यं, संसृष्ट्यप्यन्यमातृज एव संसृष्टिनो धनं नाददीतेति। एवं च असंसृष्ट्यपि वादद्यादित्यपि शब्दश्रवणात्। संसृष्टिनो नान्यमातृजएवेत्यवधारणनिषेधाच्च, असंसृष्ट-सोदरस्य संसृष्टभिन्नोदरस्य च विभज्य ग्रहणं कर्त्तव्यमित्युक्तं भवति। द्वयोरपि

धनग्रहणकारणस्यैकैकस्य सद्भावात्। एतदेव स्पष्टीकृतं मनुना—विभक्ताः सह-जीवन्तोविभजेरन् पुनर्यदीति संसृष्टिविभागं प्रक्रम्य। येषां ज्येष्ठः कनिष्ठो वा हीयेतांशप्रदानतः म्रियेतान्यतरोवापि तस्यभागो न लुप्यते। सोदर्य्याविभजेयुस्तं समेत्य सहिताः समम्। भ्रातरो ये च संसृष्टाभगिन्यश्च सनाभय इति वदता येषां भ्रातृणां संसृष्टिनां मध्ये ज्येष्ठः कनिष्ठो वा मध्यमो वाऽंशप्रदानतोंऽशप्रदाने (सार्व्व-विभक्तिकस्तसिः) विभागकाल इति यावत् हीयते स्वांशाद्भ्रश्येताश्रमान्तर परिग्रहेण ब्रह्महत्यादिना वा, म्रियेत वा, तस्य भागो न लुप्यते। अतः पृथगुद्धरणीयो न। संसृष्टिन एव गृह्णीयुरित्यर्थः। तस्योद्धृतस्य विनियोगमाह--सोदर्य्या विभ-जेयुस्तमिति। तमुद्धृतं भागं सोदर्य्याःसहोदरा असंसृष्टा अपि समेत्य देशान्तरगता अपि समागम्य सहिताः सम्भूय समं न न्यूनाधिकभावेन ये च भ्रातरोभिन्नोदराः संसृष्टास्ते च सनाभयो भगिन्यश्च समं विभजेयुः समं विभज्य गृह्णीयुरित्यर्थः॥

पुत्रपत्न्यादिसंसृष्टिनां यद्दायग्रहणमुक्तं तस्यापवादमाह—

क्लीवोथ पतितस्तज्जः पङ्गुरुन्मत्तकोजडः।
अन्धोऽचिकित्स्यरोगाद्या भर्त्तव्याः स्युर्निरंशकाः॥ १४३

क्लीवस्तृतीयाप्रकृतिः, पतितोब्रह्महादिः तज्जः पतितोत्पन्नः, पङ्गुः पादविकलः, उन्मत्तकः वातिकपैत्तिकश्लैष्मिकसान्निपातिकग्रहावेशलक्षणैरुन्मादैरभिभूतः, जडो-विकलान्तःकरणः हिताहितावधारणाक्षम इति यावत्, अन्धोनेत्रेन्द्रियविकलः, अचिकित्स्यरोगः अप्रतिसमाधेयक्षयादिरोगग्रस्तः। आद्यशब्देनाश्रमान्तरगतपितृ-द्वेषुपपातकिवधिरमूकनिरिन्द्रियाणां ग्रहणं। यथाह वसिष्ठः—अनंशास्त्वाश्रमान्तर-गता इति। नारदेनापि—पितृद्विट् पतितः षण्डो यश्च स्यादौपपातिकः, औरसा अपि नैतेऽंशं लभेरन् चेत्रजाः कुत इति। मनुरपि—अनंशौ क्लीवपतितौ जात्यन्ध-वधिरौ तथा उन्मत्तजडमूकाश्च ये च केचिन्निरिन्द्रिया इति। निरिन्द्रियोनिर्गत-मिन्द्रियं यस्माद्व्याध्यादिना स निरिन्द्रियः। एते क्लीवादयोऽनंशा रिक्थभाजो न भवन्ति केवलमशनाच्छादनदानेन पोषणीया भवेयुः। अभरणेतु पतितत्वदोषः। सर्व्वेषामपितु न्याय्यं दातुं शक्त्या मनीषिणा ग्रासाच्छादनमत्यन्तं पतितो ह्यददद्-भवेदिति मनुस्मरणात्। अत्यन्तं यावज्जीव मित्यर्थः। एतेषां विभागात् प्रागेव दोष प्राप्तावनंशित्वमुपपन्नं न पुनर्विभक्तस्य। विभागोत्तरकालमप्यौषधादिना दोषनिर्हरणे भागप्राप्तिरस्त्येव। विभक्तेषु सुतोजातः सवर्णायां विभागभाक् इत्यस्य समानन्यायत्वात्। पतितादिषु पुंलिङ्गत्वमविवक्षितम् अतश्च पत्नीदुहितृमातादीनामप्युक्तदोषदुष्टानामनं-शित्वं वेदितव्यम्। क्लीवादीनामनंशित्वात्तत्पुत्राणामप्यनंशित्वे प्राप्ते इदमाह—

औरसाः क्षेत्रजास्त्वेषां निर्दोषा भागहारिणः ।
सुताश्चैषां प्रभर्त्तव्या यावद्वै भर्तृसात्कृताः ॥ १४४

एतेषां क्लीवादीनामौरसाः क्षेत्रजा वा पुत्रा निर्दोषा अंशग्रहणविरोधिक्लैव्यादिदोषरहिता भागहारिणोंऽशग्राहिणो भवन्ति । तत्र क्लीवस्य क्षेत्रजः पुत्रः सम्भवत्यन्येषामौरसा अपि औरसक्षेत्रजयोर्ग्रहणमितरपुत्रव्युदासार्थम् । क्लीवादिदुहितॄणां विशेषमाह एषां क्लीवादीनां सुता दुहितरो यावद्विवाहसंस्कृता भवन्ति तावद्भरणीयाः संस्कार्य्याश्च । क्लीवादिपत्नीनां विशेषमाह—

अपुत्रा योषितश्चैषां भर्त्तव्याः साधुवृत्तयः ।
निर्व्वास्या व्यभिचारिण्यः प्रतिकूलास्तथैव च ॥ १४५

एषां क्लीवादीनामपुत्राः पत्न्यः साधुवृत्तयः सदाचाराश्चेद्भर्त्तव्याः भरणीयाः । व्यभिचारिण्यस्तु निर्व्वास्याः प्रतिकूलास्तथैव च निर्व्वास्याः भरणीयाश्चाव्यभिचारिण्यश्चेत् । न पुनः प्रातिकूल्यमात्रेण भरणमपि न कर्त्तव्यम् । विभजेरन् सुताः पित्रोरित्यत्र स्त्री-पुंधनविभागं संक्षेपेणाभिधाय पुरुषधनविभागो विस्तरेणाभिहितः । इदानीं स्त्रीधनविभागं विस्तरेण विधास्यन् तत्स्वरूपं तावदाह—

पितृमातृपतिभ्रातृदत्तमध्यग्न्युपागतम् ।
आधिवेदनिकाद्यञ्च स्त्रीधनं परिकीर्त्तितम् ॥ १४६

पित्रा मात्रा पत्या भ्रात्रा च यद्दत्तं यच्च विवाहकालेऽग्नावधिकृत्य मातुलादिभिर्दत्तं आधिवेदनिकं अधिवेदननिमित्तं अधिविन्नस्त्रियै दद्यादित्यादि वक्ष्यमाणं । आद्यशब्देन रिक्थक्रयसंविभागपरिग्रहाधिगमप्राप्तमेतत् स्त्रीधनं मन्वादिभिरुक्तं । स्त्रीधनशब्दश्च यौगिको न, पारिभाषिकः योगसम्भवे परिभाषाया अयुक्तत्वात् । यत्पुनर्म्मनुनोक्तम् । अध्यग्न्यध्यावाहनिकं दत्तञ्च प्रीतिकर्म्मणि भ्रातृमातृपितृप्राप्तं षड्विधं स्त्रीधनं स्मृतमिति स्त्रीधनस्य षड्विधत्वं । तन्न्यूनसंख्याव्यवच्छेदार्थं नाधिकसंख्याव्यवच्छेदाय अध्यग्न्यादिस्वरूपञ्च कात्यायनेनाभिहितम् । विवाहकाले यत् स्त्रीभ्यो दीयते वह्निसंनिधौ तदध्यग्निकृतं सद्भिः स्त्रीधनं परिकीर्त्तितम् । यत्पुनर्लभते नारी नीयमाना पितुर्गृहात्, अध्यावाहनिकं नाम स्त्रीधनं तदुदाहृतम् । प्रीत्या दत्तन्तु यत्किञ्चिच्छ्वश्र्वा वा श्वशुरेण वा पादवन्दनिकञ्चैव प्रीतिदत्तं तदुच्यते । ऊढ़या कन्यया वापि पत्युः पितृगृहेऽपि वा भ्रातुः सकाशात् पित्रोर्व्वा लब्धं सौदायिकं स्मृतमिति । किञ्च—

बन्धुदत्तं तथा शुल्कमन्वाधेयकमेव च ।
अतीतायामप्रजसि बान्धवा स्तदवाप्नुयुः ॥ १४७

बन्धुभिः कन्यायाः मातृबन्धुभिः पितृबन्धुभिश्च यद्दत्तं। शुल्कं यद्गृहीत्वा कन्या दीयते। अन्वाधेयकं परिणयनादनु पश्चादाहितं दत्तं। उक्तञ्च कात्यायनेन—विवाहात्परतो यच्च लब्धं भर्त्तृकुलात् स्त्रिया अन्वाधेयन्तु तद्द्रव्यं लब्धं पितृकुलात्तथेति। स्त्रीधनं परिकीर्त्तितमिति गतेन सम्बन्धः। एवं स्त्रीधनमुक्तं तद्विभागमाह। तत्पूर्व्वोक्तं स्त्रीधनमप्रजसि अनपत्यायां दुहितृ-दौहित्र-पुत्र-पौत्ररहितायां स्त्रियामतीतायां बान्धवा भर्त्तादयो वक्ष्यमाणा गृह्णन्ति। सामान्येन बान्धवा धनग्रहणाधिकारिणो दर्शिताः। इदानीं विवाहभेदेनाधिकारिभेदमाह—

अप्रजःस्त्रीधनं भर्त्तुर्ब्राह्मादिषु चतुर्ष्वपि।
दुहितॄणां प्रसूता चेच्छेषेषु पितृगामि तत्॥ १४८

अप्रजसः स्त्रियाः पूर्व्वोक्तायाः ब्राह्मदैवार्षप्राजापत्येषु चतुर्षु विवाहेषु भार्य्यात्वं प्राप्तायाः अतीतायाः पूर्व्वोक्तं धनं प्रथमं भर्त्तुर्भवति। तदभावे तत्प्रत्यासन्नानां सपिण्डानां भवति। शेषेष्वासुरगान्धर्व्वराक्षसपैशाचेषु विवाहेषु तदप्रजःस्त्रीधनं पितृगामि। माता च पिता च पितरौ तौ गच्छतीति पितृगामि। एकशेषनिर्द्दिष्टाया अपि मातुः प्रथमं धनग्रहणं पूर्व्वमेवोक्तम्। तदभावे तत्प्रत्यासन्नानां धनग्रहणं। सर्व्वेष्वेव विवाहेषु प्रसूता प्रसववती चेद्दुहितॄणां तद्धनं भवति। अत्र दुहितृशब्देन दुहितृदुहितर उच्यन्ते। साक्षाद्दुहितॄणां मातुर्दुहितरः शेषमित्यत्रोक्तत्वात्। अतश्च मातृधनं मातरि वृत्तायां प्रथमं दुहितरो गृह्णन्ति। अत्र चोढानूढासमवायेऽनूढा गृह्णन्ति। तदभावे परिणीताः तत्रापि प्रतिष्ठिताप्रतिष्ठितासमवाये अप्रतिष्ठिता गृह्णाति तदभावे प्रतिष्ठिता। यथाह गौतमः—स्त्रीधनं दुहितॄणामप्रत्तानामप्रतिष्ठितानां चेति। तत्र चशब्दात् प्रतिष्ठितानाञ्च अप्रतिष्ठिता अनपत्या निर्द्धना वा। एतच्च शुल्कव्यतिरेकेण। शुल्कन्तु सोदर्य्याणामेव भगिनीशुल्कं सोदर्य्याणामूर्द्ध्वं मातुरिति गौतमवचनात्। सर्व्वासां दुहितॄणामभावे दुहितृदुहितरो गृह्णन्ति। दुहितॄणां प्रसूता चेदित्यस्माद्वचनात्। तासां भिन्नमातृकाणां समवाये मातृद्वारेण भागकल्पना। प्रतिमातृतो वा स्ववर्गे भागविशेष इति गौतमस्मरणात्। दुहितृदौहित्रीणां समवाये दौहित्रीणां किञ्चिदेव दातव्यम्। यथाह मनुः यास्तासां स्युर्दुहितरस्तासामपि यथार्हतः मातामह्या धनात् किञ्चित्प्रदेयं प्रीतिपूर्व्वकमिति दौहित्रीणामप्यभावे दौहित्रा धनहारिणः। यथाह नारदः—मातुर्दुहितरोऽभावे दुहितॄणां तदन्वय इति तच्छब्देन सन्निहितदुहितृपरामर्शात्। दौहित्राणामभावे पुत्रा गृह्णन्ति। ताभ्यां ऋतेऽन्वय इत्युक्तत्वात्। मनुरपि—दुहितॄणां पुत्राणाञ्च मातृधनसम्बन्धं दर्शयति—जनन्यां संस्थितायां तु समं सर्व्वे सहोदराः। भजेरन्मातृकं

रिक्थं भगिन्यश्च सनाभय इति। मातृकं रिक्थं सर्व्वे सहोदराः समं भजेरन् सनाभयो भगिन्यश्च समं भजेरन्निति सम्बन्धः न पुनः सहोदरा भगिन्यश्च सम्भूय भजेरन्निति। इतरेतरयोगस्य द्वन्द्वैकशेषाभावादप्रतीतेः विभागकर्तृत्वान्वयेनापि चशब्दोपपत्तेः यथा देवदत्तः कृषिं कुर्य्यात् यज्ञदत्तश्चेति। समग्रहणमुद्धार विभागनिवृत्त्यर्थं सोदरग्रहणं भिन्नोदरनिवृत्त्यर्थं। अनपत्यहीनजातिस्त्रीधनं तु भिन्नोदराप्युत्तमजातीयसपत्नीदुहिता गृह्णाति। तदभावे तदपत्यं। यथा च मनु—स्त्रियास्तु यद्भवेद्वित्तं पित्रा दत्तं कथञ्चन। ब्राह्मणी तद्धरेत्कन्या तदपत्यस्य वा भवेदिति। ब्राह्मणीग्रहणमुत्तमजात्युपलक्षणम्। अतश्चानपत्यवैश्याधनं क्षत्रियाकन्या गृह्णाति। पुत्राणामभावे पौत्राः पितामहीधनहारिणः। रिक्थभाज ऋणं प्रतिकुर्युरिति गौतमस्मरणात्। पुत्रपौत्रैः ऋणं देयमिति पौत्राणामपि पितामह्या ऋणापाकरणेऽधिकारात्। पौत्राणामप्यभावे पूर्व्वोक्तभर्त्रादयो बान्धवा धनहारिणः। स्त्रीधनप्रसङ्गेन वाग्दत्ताविषयं किञ्चिदाह—

दत्वा कन्यां हरन्दण्ड्यो व्ययं दद्याच्च सोदयम्।
मृतायां दत्तमादद्यात् परिशोध्योभयव्ययम्॥ १४९

कन्यां वाचा दत्त्वाऽपहरन् द्रव्यानुबन्धाद्यनुसारेण राज्ञा दण्डनीयः। एतच्चापहरणकारणाभावे सति तु कारणे दत्तामपि हरेत् कन्यां श्रेयांश्चेद्वर आव्रजेदित्यपहाराभ्यनुज्ञानान्न दण्ड्यः। यच्च वाग्दाननिमित्तं वरेण स्वसम्बन्धिनांकन्यासम्बन्धिनां वोपचारार्थं धनं व्ययीकृतं, तत्सर्व्वं सोदयं सवृद्धिकं कन्यादाता वराय दद्यात्। अथ कथञ्चि द्वाग्दत्ता संस्कारात् प्राक् म्रियेत तदा किं कर्त्तव्यमित्यत आह। यदि वाग्दत्ता मृता तदा यत्पूर्व्वं अङ्गुलीयकादि शुल्कं वा वरेण दत्तं तद्वर आददीत परिशोध्योभयव्ययम्। उभयोरात्मनः कन्यादातुश्च यो व्ययस्तं परिशोध्य विगणय्यावशिष्टमाददीत। यत्तु कन्यायै मातामहादिभिर्दत्तं शिरोभूषणादिकं वा क्रमागतं तत्सहोदरभ्रातरो गृह्णीयुः, रिक्थं मृतायाः कन्यायाः सोदरा गृह्णीयुस्तदभावे मातुस्तदभावे पितुरिति बौधायनस्मरणात्। मृताप्रजःस्त्रीधनं भर्तृगामीत्युक्तम् इदानीं जीवन्त्याः सप्रजाया अपि स्त्रिया धनग्रहणे क्वचिद्भर्त्तुरभ्यनुज्ञानमाह—

दुर्भिक्षे धर्म्मकार्य्ये च व्याधौ सम्प्रतिरोधके।
गृहीतं स्त्रीधनं भर्त्ता न स्त्रियै दातुमर्हति॥ १५०

दुर्भिक्षे कुटुम्बभरणार्थं धर्म्मकार्य्ये अवश्यकार्य्ये व्याधौ च सम्प्रतिरोधके बन्दिग्रहणनिग्रहादौ द्रव्यान्तररहितः स्त्रीधनं गृह्णन् भर्त्ता न पुनर्दातुमर्हति। प्रकारान्तरेणापहरन् दद्यात् भर्तृव्यतिरेकेण जीवन्त्याः स्त्रिया धनं केनापि दायादेन न

गृहीतव्यम्। जीवन्तीनान्तु तासां ये तद्धरेयुः स्वबान्धवाः। तान् शिष्याच्चौरदण्डेन धार्म्मिकः पृथिवीपतिरिति दण्डविधानात्। तथा—पत्यौ जीवति यः स्त्रीभिरलङ्कारो धृतोभवेत् न तं भजेरन्दायादा भजमानाः पतन्ति ते इति दोषश्रवणाच्च। आधिवेदनिकं स्त्रीधनमुक्तं तदाह—

अधिविन्नस्त्रियै दद्यादाधिवेदनिकं समम्।
न दत्तं स्त्रीधनं यस्यै दत्तेत्वर्द्धं प्रकीर्त्तितम्॥ १५१

यस्या उपरि विवाहः साऽधिविन्ना, साचासौ स्त्रीचेत्यधिविन्नस्त्री तस्यै अधिविन्नस्त्रियै आधिवेदनिकं अधिवेदननिमित्तं धनं समं यावदधिवेदनार्थं व्ययीकृतं तावद्दद्यात् यस्यै श्वशुरेण भर्त्रा वा स्त्रीधनं न दत्तं, दत्ते पुनः स्त्रीधने आधिवेदनिकद्रव्यस्यार्द्धं दद्यात्। अर्द्धशब्दश्चात्र समविभागवचनपरो न भवति अतश्च यावता तत्पूर्व्वदत्तमाधिवेदनिकसमं भवति तावद्देयमित्यर्थः। एवं विभागमुक्त्वा इदानीं तत्सन्देहे निर्णयहेतुमाह—

विभागनिह्नवे ज्ञातिबन्धुसाक्ष्यभिलेखितैः।
विभागभावना ज्ञेया गृहक्षेत्रैश्च यौतकैः॥ १५२ *

विभागस्य निह्नवे ऽपलापे ज्ञातिभिः पितृभिः मातृभिः बन्धुभिः मातुलादिभिः साक्षिभिः पूर्व्वोक्तलक्षणै र्लेख्येन च विभागपत्रेण विभागभावना विभागनिर्णयो ज्ञातव्या। तथा यौतकैः पृथक्कृतैर्गृहक्षेत्रैश्च पृथक्कृष्यादिकार्य्यप्रवर्त्तनं। पृथक् पञ्चमहायज्ञादि धर्म्मानुष्ठानञ्च। नारदेन विभागलिङ्गमुक्तम्। विभागधर्म्मसन्देहे दायादानां विनिर्णयः ज्ञातिभिर्भागलेख्येन पृथक्कार्य्यप्रवर्त्तनात्। भ्रातृणामविभक्तानामेको धर्म्मःप्रवर्त्तते। विभागे सति धर्म्मोपि भवेत्तेषां पृथक्पृथगिति। तथा परास्यपि विभागलिङ्गानि तेनैवोक्तानि। साक्षित्वं प्रातिभाव्यञ्च दानं ग्रहणमेवच विभक्ता भ्रातरः कुर्य्युर्नाविभक्ताः कथञ्चनेति। इति रिक्थविभागप्रकरणम्॥

* The numbering of the texts in Colebrooke's translation is always 3 less than in the printed edition of the Sanscrit Mitakshara of 1829 So 152 would be 149 in Colebrooke's translation and so on.

MITAKSHARA.

यदा सम्भूयकारिणां मध्ये यः कश्चिद्देशान्तरगतो मृतस्तदा तदीयमंशं दायादाः पुत्राद्यपत्यवर्गो बान्धवा मातृपक्षीया मातुलाद्याः । ज्ञातयोऽपत्यवर्गव्यतिरिक्ताः सपिण्डा वा । आगताः सम्भूय व्यवहारिणो ये देशान्तरादागतास्ते वा गृह्णीयुः । तैर्विना दायादाद्यभावे राजा गृह्णीयात् । वाशब्देन च दायादादीनां वैकल्पिकमधिकारं दर्शयति । पौर्व्वापर्य्यनियमस्तु पत्नीदुहितर इत्यादिप्रतिपादितएवात्रापि वेदितव्यः । शिष्यसब्रह्मचारिब्राह्मणनिषेधो वणिक्प्रातिश्च वचनप्रयोजनम् । वणिजामपि मध्ये यः पिण्डदानर्णदानादिसमर्थः स गृह्णीयात् सामर्थ्याविशेषे पुनः सर्व्वे वणिजः संहृष्टिनो विभज्य गृह्णीयुः । तेषामप्यभावे दशवर्षं दायादाद्यागमनं प्रतीक्ष्यानागतेषु स्वयमेव राजा गृह्णीयात् । तदिदं नारदेन स्पष्टीकृतम् । *

एतदेव स्पष्टीकृतं कात्यायनेन "स्मार्त्ते काले क्रियाभूमेः सागमा भुक्तिरिष्यते । अस्मार्त्ते त्वागमाभावात् क्रमात्त्रिपुरुषागता" इति । स्मार्त्तश्च कालो वर्षशतपर्य्यन्तः शतायुर्वै पुरुष इति श्रुतेः अनुगमाभावादिति योग्यानुपलब्ध्यभावे नागमाभावनिश्चया-भावादिति अतश्च वर्षशताधिको भोगः सन्ततोऽप्रतिरवः प्रत्यर्थिप्रत्यक्षश्चागमाभावे च निश्चिते अव्यभिचारादाद्यिमागमः स्वत्वं गमयति । †

दद्युर्व्वा स्वकृतां वृद्धिं सर्व्वे सर्व्वासु जातिषु ॥ २—३०

सर्व्वे वा ब्राह्मणादयोऽधमर्णाः सबन्धके सबन्धके वा स्वकृतां स्वाभ्युपगतां वृद्धिं सर्व्वासु जातिषु दद्युः क्वचिदकृतापि वृद्धिर्भवति यथाह नारदः "न वृद्धिः प्रीतिदत्तानां स्यादनाकारिता क्वचित् अनाकारितमप्यूर्द्ध्वं वत्सरार्द्धाद्विवर्द्धते" इति । यस्तु याचितकं गृहीत्वा देशान्तरं गतस्तं प्रति कात्यायनेनोक्तम् "यो याचितकमादाय तमदत्वा दिशं व्रजेत् । ऊर्द्ध्वं संवत्सरात्तस्य तद्धनं वृद्धिमाप्नुयात्" इति यश्च

* Commentary on the following text :

देशान्तरगते प्रेते द्रव्यं दायादबान्धवाः ।

ज्ञातयो वा हरेयुस्तदागतास्तैर्विना नृपः ॥ २—२६९

† Extract from the commentary on the following text :

आगमोऽभ्यधिकभोगाद्विना पूर्व्वक्रमागतात् ।

आगमेऽपि बलं नैव भुक्तिस्तोकापि यत्र नो ॥ २—२८

याचितकमादाय याचितोऽप्यदत्त्वा देशान्तरं व्रजति तं प्रति तेनैवोक्तम् "कृत्वोद्धारमदत्त्वा यो याचितस्तु दिशं व्रजेत् ऊर्द्ध्वं मासत्रयात्तस्य तद्धनं वृद्धिमाप्नुयात्" इति यः पुनः स्वदेशे स्थित एव याचितो याचितकं न ददाति तं याचितकालादारभ्य वृद्धिं दापयेद्राजा यथाह, स्वदेशेऽपि स्थितो यस्तु न दद्याद्याचितः क्वचित। तं ततोऽकारितां वृद्धिमनिच्छन्तञ्च दापयेत्" इति। अनाकारितवृद्धेरपवादो नारदेनोक्तः "पण्यमूल्यं भृतिर्न्यासो दण्डो यश्च प्रकल्पित'। वृथादानाक्षिकपणा वर्द्धन्ते नाविवक्षिता" इति। अविवक्षिता अनाकारिता इति॥ * *

एतच्च सकृत् प्रयोगे सकृदाहरणे च वेदितव्यं पुरुषान्तरसंक्रमणेन प्रयोगान्तरकरणे तस्मिन्नेव वा पुरुषे अनेकशः प्रयोगान्तरकरणे सुवर्णादिकं द्वैगुण्याद्यतिक्रम्य पूर्ब्ववद्वर्द्धते। सकृत् प्रयोगेऽपि प्रतिदिनं प्रतिमास प्रतिसवत्सरं वा वृद्ध्याहरणेऽधमर्णदेयस्य द्वैगुण्यासम्भवात् पूर्ब्वाहृतवृद्ध्या सह द्वैगुण्यमतिक्रम्य वर्द्धत एव। यथाह मनुः "कुसीदवृद्धिर्द्वैगुण्यं नात्येति सकृदाहिता" इति सकृदाहृतेत्यपि। पाठोस्ति। उपचयार्थं प्रयुक्तं द्रव्यं कुसीदन्तस्य वृद्धिः कुसीदवृद्धिः द्वैगुण्यं नात्येति नातिक्रामति यदि सकृदाहिता सकृत् प्रयुक्ता पुरुषान्तरसंक्रमणादिना प्रयोगान्तरकरणे द्वैगुण्यमत्येति। सकृदाहृतेति पाठे तु शनैःशनैः प्रतिदिन प्रतिमास प्रतिसम्वत्सरं वाऽधमर्णादाहृता द्वैगुण्यमत्येतीति व्याख्येयम्। तथा गौतमेनाप्युक्तम् चिरस्थाने द्वैगुण्यं प्रयोगस्येति प्रयोगस्येत्येकवचननिर्द्देशात् प्रयोगान्तरकरणे द्वैगुण्यातिक्रमोऽभिप्रेतः चिरस्थान इति निर्द्देशात् शनैः शनैर्वृद्धिग्रहणे द्वैगुण्यातिक्रमो दर्शितः॥ *

इदानीं देयमृणं यदा येन देयं तदाह—

अविभक्तैः कुटुम्बार्थे यदृणं तत् कृतं भवेत्।
दद्युस्तद्रिक्थिनः प्रेते प्रोषिते वा कुटुम्बिनि॥ २—४५

अविभक्तैर्ब्बहुभिः कुटुम्बार्थमेकैकेन वा यदृणं कृतं तदृणं कुटुम्बी दद्यात् तस्मिन् प्रेते प्रोषिते वा तद्रिक्थिनः सर्ब्बे दद्युः॥ * *

पुत्रपौत्रैः ऋणं देयमिति वक्ष्यति तस्य पुरस्तादपवादमाह—

सुराकामद्यूतकृतं दण्डशुल्कावशिष्टकम्।
वृथादानं तथैवेह पुत्रो दद्यान्न पैतृकम्॥ २—४७

सुरापानेन यत् कृतमृणं कामकृतं स्त्रीव्यसनेमकृतं द्यूते पराजयनिमित्तं दण्डशुल्कयोरवशिष्टं वृथादानं धूर्त्तवन्दिमल्लादिभ्यो यत् प्रतिज्ञातं "धूर्त्ते वन्दिनि मल्ले च कुवैद्ये कितवे शठे। चाटचारणचौरेषु दत्तं भवति निष्फलं" इति स्मरणात्।

* Commentary on Yajnavalkya ii. 40.

एतदृणं पित्रा कृतं पुत्रादिः शौण्डिकादिभ्यो न दद्यात् यत्र दण्डशुल्कावशिष्टकमित्य-वशिष्टग्रहणात् सर्वं दातव्यमिति न मन्तव्यम् "दण्डं वा दण्डशेषं वा शुल्कं तच्छेषमेव वा। न दातव्यन्तु पुत्रेण यच्च न व्यवहारिकं" इत्यौशनसस्मरणात्। गौतमेनाप्युक्तं मद्यशुल्कद्यूतकामदण्डान्नपुत्रानध्यावहेयुरिति न पुत्रस्योपरि भवन्तीत्यर्थः अनेनादेय-मृणमुक्तम्॥ * *

पितरि प्रोषिते प्रेते व्यसनाभिप्लुतेऽपि वा।
पुत्रपौत्रैर्ऋणं देयं निह्नवे साक्षिभावितम्॥ २—५०

पिता यदि दातव्यमृणमदत्वा प्रेतो दूरदेशगतोऽचिकित्सनीयव्याध्याद्यभिभूतो वा तदा तत्कृतमृणमवश्यन्देयं पुत्रेण पौत्रेण वा पितृधनाभावेऽपि पुत्रत्वेन पौत्रत्वेन च। तत्र क्रमोप्ययमेव पित्रभावे पुत्रः पुत्राभावे पौत्र इति पुत्रेण पौत्रेण वा निह्नवे कृते अर्थिना साक्ष्यादिभिर्भावितमृणं देयम् पुत्रपौत्रैरित्यन्वयः। अत्र पितरि प्रोषित इत्येतावदुक्तम्। कालविशेषस्तु नारदेनोक्तो द्रष्टव्यः "नार्वाक् संवत्सरा-द्विंशात् पितरि प्रोषिते सुतः। ऋणं दद्यात्पितृव्ये वा ज्येष्ठे भ्रातर्यथापि वा" इति॥ प्रेतेऽप्यप्राप्तव्यवहारकालो न दद्यात् प्राप्तव्यवहारकालस्तु दद्यात् स च कालस्तेनैव दर्शितः "गर्भस्थैः सदृशो ज्ञेय आष्टमाद्वत्सराच्छिशुः। बाल आषो-डशाद्वर्षात् पौगण्डश्चेति शब्द्यते॥ परतो व्यवहारज्ञः स्वतन्त्रः पितरावृते" इति यद्यपि पितृमरणादूर्ध्वं बालोपि स्वतन्त्रो जातस्तथापि नर्णभाग्भवति यथाह "अप्राप्त-व्यवहारश्चेत् स्वतन्त्रोऽपि हि नर्णभाक् स्वातन्त्र्यं हि स्मृतं ज्येष्ठे ज्यैष्ठ्यं गुणवयःकृतं" इति। * * * * अत्र च पुत्रपौत्रै ऋणं देयमित्यविशेषेणोक्तं तथापि पुत्रेण यथा पिता सवृद्धिकं ददाति तथैव ऋणं देयं पौत्रेण तत्समं मूल्यमेव दातव्यं न वृद्धिरिति विशेषोवगन्तव्यः ऋणमात्मीयवत् पित्र्यं देयं पुत्रैर्विभावितम् पैतामहं समं देयमदेयं तत्सुतस्य त्विति बृहस्पतिवचनादच विभावितमित्यविशेषोपादानात् साक्षिविभावितमित्यत्र साक्षिग्रहणं प्रमाणोपलक्षणम् समं यावद्गृहीत तावदेव देयं न वृद्धिः तत्सुतस्य प्रपौत्रस्यादेयमगृहीतधनस्य एतच्चोत्तरश्लोके स्पष्टयिष्यते॥ ऋणापाकरणे ऋणी तत्पुत्रः पौत्र इति त्रयः कर्त्तारो दर्शिताः तेषाञ्च समवाय-क्रमोऽपि दर्शितः इदानीं कर्त्रन्तरसमवाये च क्रममाह। * *

दर्शने प्रतिभूर्यत्र मृतः प्रात्ययिकोऽपि वा।
न तत्पुत्रा ऋणं दद्युर्दद्युर्दानाय यः स्थितः॥ २—५५

यदा दर्शनप्रतिभूः प्रात्ययिकोपि वा प्रतिभूर्दिवं गतः तदा तयोः पुत्राः प्रातिभाव्यायातं पैतृकमृणं न दद्युः यस्तु दानाय स्थितः प्रतिभूर्दिवङ्गत स्तस्य पुत्रा

दद्युर्न पौत्राः ते च मूल्यमेव दद्युर्न वृद्धिम्। ऋणं पैतामहं पौत्राः प्रातिभाव्यागतं सुतः। समं दद्यात् तत्सुतौ तु न दाप्याविति निश्चय इति व्यासवचनात् प्रातिभाव्यव्यतिरिक्तं पैतामहमृणं पौत्रः समं यावद्गृहीतं तावदेव दद्यान्नवृद्धिं तथा तत्सुतोऽपि प्रातिभाव्यागतं पितुरृणं सममेव दद्यात् तयोः पुत्रपौत्रयोः सुतौ पौत्रप्रपौत्रावपि प्रातिभाव्यायातं च ऋणं यथाक्रममगृहीतधनौ न दाप्याविति यदपि स्मरणं "खादकोवित्तहीनः स्याल्लग्नको वित्तवान्यदि, मूलं तस्य भवेद्देयं न वृद्धिं दातुमर्हति" इति तदपि लग्नकः प्रतिभूः खादकोऽधमर्णः लग्नको यदि वित्तवान् मृत स्तस्य पुत्रेण मूल्यमेव दातव्यं न वृद्धिरिति व्याख्येयं यत्र दर्शनप्रतिभूः प्रत्ययप्रतिभूर्वा बन्धकं पर्य्याप्तं गृहीत्वा प्रतिभूर्जातस्तत्र तत्पुत्रा अपि तस्मादेव बन्धकात् प्रातिभाव्यायातमृणं दद्युरेव। यथाह कात्यायनः "गृहीत्वा बन्धकं यत्र दर्शनेऽस्य स्थितो भवेत्, विना पित्रा धनात्तस्माद्दाप्यः स्यात्तदृणं सुतः" इति दर्शनग्रहणं प्रत्ययस्योपलक्षणं विना पित्रा पितरि प्रेते दूरदेशङ्गते वेति॥ * * *

ऋणं लेख्यकृतं देयं पुरुषैस्त्रिभिरेव तु।
आधिस्तु भुज्यते तावत् यावत्तन्न प्रदीयते॥

२ अ ९०

यथा साक्ष्यादिकृतमृणं त्रिभिरेव देयं तथा लेख्यकृतमप्याहर्तृतत्पुत्र तत्पुत्रैस्त्रिभिरेव देयं न चतुर्थादिभिरिति नियम्यते। ननु पत्रपौत्रैः ऋणं देय मित्यविशेषेण ऋणमात्रं त्रिभिरेव देयमिति नियतमेव वाढं अस्यैवोत्सर्गस्य पत्रारूढर्णविषये स्मृत्यन्तरप्रभवामपवादशङ्कामपनेतुमिदं वचनमारब्धं तथाहि पत्रलक्षणमभिधाय कात्यायनेनाभिहितम्। एव कालमतिक्रान्तं पितॄणां दाप्यते ऋणम्। इति इत्थं पत्रारूढमृणमतिक्रान्तकालमपि पितॄणां सम्बन्धी दाप्यते। अत्र पितॄणामिति बहुवचननिर्द्देशात् कालमतिक्रान्तमिति वचनाच्च चतुर्थादि दाप्य इति प्रतीयते यथा हारीतेनापि लेख्यं यस्य भवेद्धस्ते लाभं तस्य विनिर्द्दिशेदिति। अत्रापि यस्य हस्ते लेख्यमस्ति तस्यर्णलाभ इति सामान्येन चतुर्थादिभ्योऽप्यृणलाभोऽस्ति इति प्रतीयते। ततश्चैतदाशङ्कानिवृत्त्यर्थमेतद्वचनमित्युक्तम्। वचनद्वयं च योगीश्वरवचनानुसारेण योजनीयम्। अस्यापवादमाह सबन्धकेऽपि पत्रारूढे ऋणे त्रिभिरेव देयमिति नियमाद्दृणापाकरणानधिकारेणापहरणेऽपि अनधिकार प्राप्ताविदमुच्यते यावच्चतुर्थेन पञ्चमेन वा ऋणं न दीयते तावदेवाधिर्भुज्यते इति वदता सबन्धकर्णापाकरणे चतुर्थादेरप्यधिकारो दर्शितः। नन्वेतदप्युक्तमेव फलभोग्यो न नश्यतीति सत्यम्। तदप्येतस्मिन्नसत्यपवादवचने पुरुषत्रयविषयमेव स्यादिति सर्व्वमनवद्यम्। * *

स्वस्वत्वनिवृत्ति: परस्वत्वापादानञ्च दानं परस्वत्वापादानञ्च परो यदि स्वीकरोति तदा सम्पद्यते नान्यथा। स्वीकारश्च त्रिविध: मानसो वाचिक: कायिकश्चेति।

Portion of the commentary on Yajnavalk-a II. 28.

असपिण्डां समान एक: पिण्डो देहो यस्या: सा सपिण्डा न सपिण्डा असपिण्डा तां, सपिण्डता च एकशरीरावयवान्वयेन भवति। तथाहि पुत्रस्य पितृशरीरावयवान्वयेन पित्रा सह सापिण्ड्यम्। एवं पितामहादिभिरपि पितृद्वारेण तच्छरीरावयवान्वयात्। एवं मातृशरीरावयवान्वयेन मात्रा, तथा मातामहादिभिरपि मातृद्वारेण, तथा मातृष्वसृमातुलादिभिरपि एकशरीरावयवान्वयात्, तथा पितृव्यपितृष्वस्रादिभिरपि, तथा पत्न्या सह पत्या एकशरीरारम्भकतया एवं भ्रातृभार्याणामपि परस्परमेकशरीरारम्भै: सहैकशरीरारम्भकत्वेन एवं यत्र सपिण्डशब्द स्तत्र तत्र साक्षात् परम्परया वा एकशरीरावयवान्वयो वेदितव्य:।

असपिण्डामित्यनेकशरीरान्वयद्वारेण साक्षात् पारम्पर्य्येण च सापिण्ड्यमुक्तम्। तच्च सर्वत्र सर्वस्य यथाकथञ्चिदनादौ संसारे भवतीत्यतिप्रसङ्ग इत्यत आह— मातृतोमातु: सन्ताने पञ्चमादूर्द्ध्वं पितृत: पितु: सन्ताने सप्तमादूर्द्ध्वं सापिण्ड्यं निवर्त्तत इति शेष:। अतश्चायं सपिण्डशब्दोऽवयवशक्त्या सर्व्वत्र प्रवर्त्तमानोऽपि निर्म्मथ्यपङ्कजादिशब्दवन्नियतविषय एव। तथाच पित्रादय: षट् सपिण्डा: पुत्रादयश्च षट् आत्मा च सप्तम:। सन्तानभेदेऽपि यत: सन्तानभेदस्तमादाय गणयेद्यावत् सप्तम इति सर्वत्रयोजनीयम्। तथाच मातरमारभ्य तत्पितृपितामहादिगणनायां पञ्चमपुरुषवर्त्तिनी मातृत: पञ्चमीत्युपचर्य्यते। एवं पितरमारभ्य तत्पित्रादिगणनायां सप्तमपुरुषसन्तानवर्त्तिनी पितृत: सप्तमीति। तथाच भगिन्योर्भगिनीभ्रात्रोर्भ्रातृपुत्रीपितृव्ययोर्विवाहे ह्यादिभूतत्वाच्छरीराभेदोऽवगम्यते।

PERIOD 1100 A. D. TO 1300 A. D.

APARARKA.

THE COMMENTARY OF APARADITYA ON YAJNAVALKYA SMRITI.

PARTITION OF HERITAGE.

The titles of law called loan and deposit and as part of them, the modes of human and divine evidence have been described. Now begins the title of law called partition.

"A father when making partition can divide among his sons as he pleases either giving to the eldest the best share or in such wise that all share equally." Yajnavalkya II. 115*

Partition is the division of property paternal and the like, in reference to and in consideration of sons and the like. In this, the father divides the paternal property is the rule. For special cause the sons also divide. That is said above. Here if the father divides, then according to his desire, he divides the wealth with reference to the sons who are objects of division in greater or less shares, *i.e.*, disposes of by saying that of this wealth, 'this share is yours, and that share is yours'

Sankha says "If the father has got only one son, he may take two shares for himself"

If it is said that this should not be understood as out of desire, but the father gets it because of his power to make partition (it may be replied that) a sentient being is not independent in acts done unwillingly; the independent person is called the doer or master. This is true. But from the power to make partition is obtained the desire in the matter of partition. Therefore the father divides at his desire by this. The unequal partition by giving to one son a less share and to another a greater share, is the subject of that desire Therefore out of his desire he divides among his sons in greater or less shares: this is the meaning. From 'if he divides' is indicated only division and not the mode of unequal division. But there is the text· "The preferential share of eldest is one twentieth and the best out of all things, half of that is of the middlemost and one fourth of that of the youngest." (Manu 9, V. 112.)

* The numbering is according to Colebrooke According to Apararka the text is II. 114.

Whatever preferential shares have been prescribed by texts like the above about preferential shares, are all indicated here. Whatever remains after paying that share, in that there is unequal partition at the desire of the maker of the partition ; 'at his desire divides the sons' this is here prescribed : This is established. Here Narada says.

"When the father has divided his sons by greater or less shares, that division is lawful for the father is master of all." (Narada, XIII. V 15).

It should not be said that this refers to the preferential shares from the text that the father, is the master. The preferential share is not result of the authority of the father but of the Shastra. Vrihaspati says : "Those sons for whom their shares have been arranged by the father, whether equal, less or greater, must abide by such arrangement ; otherwise they should be punished." (Vrihaspati 25 V 5).

From the text 'at his desire divides the sons', partition only proceeds from the desire of the father from his authority to divide ; and also as unnecessary use of words should be avoided, and as it follows by *Parisankha* or the deducing of a negative rule from a positive, it should be understood that there can be no partition at the desire of the sons. To that effect is the text of Manu : "After the death of the father and of the mother, the brothers having assembled should equally divide the paternal wealth ; while the parents are living, they are powerless" (Manu 9 V 104).

Devala says, "On the father's death the sons may divide the property of the father ; they have no power, while the father without fault is alive."

"No power" means want of independence.

Sankha Likhita says : "Partition takes place after the death of the father So long as the father lives, the sons cannot divide the wealth, even if there be property subsequently acquired by them, for they are powerless ; since they are not independent in respect of wealth and religious works while the father is living."

Narada also says "Where a partition of the paternal property is instituted by the sons, it is called by the learned partition of property." (Narada 13. V. 1.)

Here also the words 'of the paternal wealth' are used to show division by the sons. The text "if the father makes a division" refers to father's self acquired property. In respect of property acquired by his (father's) father and the like, the father and the son have equal power to partition. Therefore Vishnu says : "If the father makes a partition among his sons he may dispose of, as he likes, his self acquired property. In respect of property acquired by the father's father, the sons can sometimes partition."

Therefore Narada says : 'Therefore after the death of the father, the sons equally divide the wealth.' Having established the power of the sons to partition after the death of the father, Narada has said : "When the mother has ceased to menstruate and the sisters are married, or when the father's sexual desire is extinguished and he has ceased to care for wordly interests." After this should be understood "the sons should divide the properly equally."

Sankha say : "there may be partition when the father is without desire, old, when his intellect is perverted or when he is afflicted with long-standing disease."

Narada says : "A father who is diseased or angry or absorbed by worldly interests or who acts illegally has not the power to distribute his property (as he likes)." (Narada V. 15 13).

(In this text of Narada) 'who acts illegally' means who disregards rules of injunction and prohibition to do. The sons have independence in respect of partition of father's self acquired, property when there is cause like the father's being without desire. When the mother is not dead, the sons are not independent. So says Sankha : "Let the eldest like a father protect the goods of the rest ; for (the support of) the family depends on the heritage. They are not independent while they have the father living or while the mother is with them." This happens when the mother is able to support the family. When jointness of the younger brothers with the eldest is mentioned, it is meant that some them are studying the Vedas. Among those who have completed studying the Vedas and understood the meaning of the Vedas and able to perform sacrifices like the Agnihotra, partition is preferable.

As says Manu : "Either let them thus live together or apart, (if each) desires (to gain) spiritual merit. Dharma increases if separate. Therefore separate works of merit are right." (Manu 9 V. III.)

Vyasa says : "As long as the parents are alive, the brothers should be joint. After their death, the merit of divided brothers increases." As long as the younger brothers out of respect remain joint with the eldest, their necessary sacrifices like the Vaisvaideva also are not separate. So says Vrihaspati : "the worship of the Manes, Gods and Brahmanas by those residing togethar and cooking their food (in one house) is single. But when they divide the property (the worship) takes place separately in each house."
(Vrihaspati Ch. 25 V 6.)

In the aforesaid partition by the father there may be unequal partition. In respect of this Manu mentions an exception. "If undivided brothers while living together with their father, make an exertion (for gain) the father shall on no account give to them unequal shares (on partition)."
(Manu 9 V. 215.)

"If he give equal shares, such of his wives as have not received Stridhana from their husband or father-in-law shall also equally share." (Yajnavalkya II. 116.)

If the father makes equal division of wealth for the sons, then those wives of his, who have not been endowed with *Stridhana* by the husband, the father-in-law or the father should be made equal sharers with the sons. Whatever be the share of one son that should be the share of each wife. This is the meaning.

Another reason for inequality in partition is mentioned.

"If one have means and do not desire to share, he shall be separated, something trifling being given to him." (Yajnavalkya II. 117.)

The son, who because of ability to acquire wealth does not desire paternal property or who, though able to earn, out of fraudulent motives, does not make exertion necessary for earning and preserving wealth, should be separated after giving him some worthless small property, otherwise there may be dispute with him or with his children. This is the rule about property acquired jointly with the sons. In property of the father and the like, the son obtains equal share. Manu says:

"He among the brothers who, though able, does not exert to acquire property, should be separated after giving him something from own share as maintenance."

'From own share' here means from the property acquired by the (other) brothers. In this connection, another matter is mentioned by Narada.

"He, who being authorised to look after the family does its work should be supported by the brothers with food, raiment and vehicles."

Apastamba says: "All who are virtuous are sharers. He who disposes property unrighteously should be made shareless" Unrighteously means gambling and the like. Property means gold, cattle, clothes &c; disposes means destroys, or gives away to another out of the family.

Gautama says: "Even the son of the wife of the same caste does not inherit if he be living unrighteously."

Manu says: "All these that habitually commit forbidden acts are unworthy of the share of the property."

Sankha Likhita says: "Of one who is excommunicated, the heritage, the oblation of food and libation of water cease."

'Excommunicated' means turned out of caste on account having become Patita. Heritage means paternal wealth; in the case of those, who stand in the position of sons, it means wealth of kinsmen.

Unequal division has been described. It cannot be overridden, because it is lawful. Therefore says (Yajnavalkya):

"A distribution by father in smaller or lesser shares is lawful." (Yajnavalkya II. 117.)

Or in property acquired by the sons, when unequal shares are allotted, what is done by the father is lawful for brothers so divided in wealth. That can not be set aside.

Vrihaspati says: "Those (sons) for whom their shares have been arranged by the father, whether equal less or greater, should abide by such arrangement. Otherwise they should be punished."

Now is mentioned another kind of division different in the matter of the person, manner and time.

"After the decease of both parents, the sons shall equally divide the property and the debt. The daughters take the wealth of the mother after paying debts; in their default, the issue." (Yajnavalkya II. 118.)

After the death of father and mother, the wealth and debts of both are obtained by sons in equal shares. From that follows that when one gets a certain share of the heritage, he has to take the same share of the debt on himself. When there is unequal division according to the rule about four, three, two and one shares (according to caste of the mother), and the rule about unequal division of selfacquired property; the debt should also be divided in accordance with the division of wealth.

Whatever remains of the mother's wealth after paying (her debt) should be taken by her daughters; in their default, by their issue. In default of daughters and their issue, the sons take the mother's wealth, as says Katyayana:

"In default of daughters, that heritage, belongs to sons but what is given by Bandhus belongs to Bandhus; in their default it goes to the husband. Sisters having husbands shall share with Bandhavas. This is the lawful partition of *Stridhana.*"

Manu says: "But when the mother has died, all the uterine brothers and sisters shall equally divide the mother's estate" Here the particle *Cha* (and) is used in an alternative and not in a conjunctive sense. In the alternative, maiden daughters take first, as says Manu: "The mother's separate property falls to the share of the maiden daughter." Gautama however, enjoins the right to inherit mother's estate even of the married daughters, who are poor and unprovided: "*Stridhana* belongs to maiden daughters and also to unprovided daughters."

Here unprovided means childless, poor or widowed. Vrihaspati says: "Stridhana goes to the children and the daughter, if not betrothed, has a share in it; if she is married, she shall receive something for honor."

Yautaka means separate property. Something for honor means a trifle. Vasista says: "Let the daughters divide the *Parinahya* of mothers." *Parinahya* means ornaments &c. In

the matter of the estate of childless women, Manu says : "The wealth of females given by the father, the Brahmani daughter takes or her issue." (Given) by father means also given by others. Daughter means stepdaughter limited by the adjective Brahmini. This being so when there are married wellprovided daughters, the sons also become entitled to the mother's estate. In this connection, Manu speaks of another matter : "From the estate of the maternal grandmother, something should be paid out of love to the daughters of the daughters according to their deserts."

The text "sons divide" means divide after the death of parents. If they divide after the death of the parents, they should do so equally. This text refers to partition by the brothers. Therefore, even during the lifetime of the father, the division by the brothers should be equal. It should be understood that the rule does not apply to distribution by the father. Nor should it be interpreted as meaning that partition should take place only after the death of both the parents. To that effect says Manu:

"Either let them thus live together or apart, if (each) desires (to gain) spiritual merit ; Dharma increases when separate. Therefore separate works of merit are right."

Again says Manu "(Or) the eldest alone may take the whole paternal estate, the others shall live under him just as (they lived) under their father."

This should be understood to refer to the case where the younger brothers have not completed their period of study of the Vedas or are disqualified on account of insanity &c. and also when they are minors. On this, says Katyayana : "Partition is proper in the case of those who have attained majority. Males become major in their sixteenth year." This is for showing what is majority. Want of study of the Vedas is also cause for non-partition as says Hareeta : "If the younger brothers have not studied completely the Vedas, the brothers should live jointly." Narada also says :

"Or the senior brother shall maintain all (the junior brothers) like a father, if they wish it, or even the youngest brother, if able ; the well-being of a family depends on the ability (of its head)."

Narada says that there should be partition after payment of the father's debts. "What is left (of the father's property, when the father's obligations have been discharged and when the father's debts have been paid, shall be divided by the brothers, in order that the father may not continue a debtor."

Father's obligation means nine Sraddhas, as says Gautama "Should discharge (this debt by performing) the nine Sraddhas." Katyayana says : "But all debts incurred for the purpose of the

family by a brother or paternal uncle or the another must be paid by the coheirs at the time of partition. That debt shall be paid to the creditor, when after dispute the same is established by evidence, otherwise, they shall not be compelled to pay."

After dispute means after contest. (Katyayana) again says: "The paternal debt, the debt incurred by a relative and a debt incurred by a member himself, such debts are payable jointly by the coheirs at partition. Whatever is given for a religious purpose or through affection and whatever debt the son has been directed to pay, the same shall be divided, when known. There can be no gift from patrimony." The meaning of this is: whatever was intended to be spent for religious purposes, what was promised to be given out of affection by the father, what the father has directed his own son to pay. When seen means when known. All the above should be divided. There should be no partition after deducting them.

(Katyayana says): "Whatever is known, houses, fields and quadrupeds should be divided. If concealment of property is suspected, discovery by ordeal is prescribed.

"Household, furniture, beasts of burden, milch cows, ornaments and workmen, that are visible; should be divided; and in case of concealment, Brighu ordains *kosha* or an ordeal." Pratyaya means ordeal. *Kosha* is used to mean ordeal generally.

Manu say: "Let them not divide a single goat or sheep or a single beast with uncloven hoofs; a single goat or sheep belongs to the firstborn."

Unequal means when it can not be divided evenly according to the number of the brothers.

Yajnavalkya defines impartible properly.

"What has been acquired by any one, as an increment without diminishing the paternal estate likewise a gift from a friend or a marriage gift does not belong to the co-heirs." (Yajnavalkya II 119.)

Among those joint in estate, property in excess of another acquired by one member without detriment to the paternal estate and without living on it, by one's own self, whatever is received from friends, what is received from father-in-law and the like at marriage, with that the coheirs shall have no connection. That can not be partitioned but belongs to the acquirer.

Manu says: "What one (brother) may acquire by his labour without using the patrimony, that acquisition by his own effort, he shall not share unless by his own will."

Srama means war, agriculture &c. *Iha* means endeavour without labour.

Katyayana says: "Whatever is gained with a damsel of the same caste at the time of receiving presents at marriage, that wealth coming with bride is clean and a proper means of

livelihood. That is known as nuptial gift which comes with her. All this kind of wealth is considered as means of producing Dharma."

Again : " He, who recovers hereditary property, which had been lost, need not give it up to the parceners, nor what has been gained by science." (Yajnavalkya II. 120.)

Whatever ancestral property or the like, field and garden, had been wrongfully taken by another and when one recovers it with the consent of the coheirs, he should not give it to the coparceners. When property is recovered without the consent of the coheirs, the recoverer should take a fourth part of it. So says Rishyasringa : " When one recovers ancestral land lost before, rest of the coparceners shall receive it according to their shares, giving one fourth to the recoverer."

Whatever is acquired by means of learning may not be given to the other coheirs.

Manu says : " Property acquired by learning belongs solely to the acquirer, likewise the gift of a friend, a present received on marriage or with the honey mixture."

Katyayana says : " What has been acquired by learning after instructions received from another and getting maintenance from others is called wealth gained by learning " Bhaktam means food. From another means other than father. (Katyayana further says) : " What has been gained by proving superior learning after a prize has been offered must be considered as the gains of learning and ought not to be divided. What has been obtained from a pupil or by officiating as a priest or for answering a question, or for determining a doubtful point, or through display of knowledge or by success in disputation or for superior skill in reading, the sages have declared as gains of learning and not subject to distribution. The same rule likewise applies to the arts and to increase of price from superior skill in them. A prize which has been offered for the display of superior learning and a gift from a votary (for whom a sacrifice had been previously performed) or a present from a pupil, sages have have declared to be gains of learning. What is otherwise acquired is common to all coheirs. Even what is won by surpassing another in learning after a stake has been deposited are gains of learning according to Brihaspati. What is obtained by the boast of learning, what is received from a pupil, what is received by officiating as a priest are gains of learning according to Bhrigu. When (a soldier) performs a gallant action and favour is shown to him by his master pleased with that action ; whatever property is then received by him shall be considered as gains of valour."

Vyasa says : " Whatever is gained by science and wealth acquired by valour and the affectionate gift from kindred to women shall not be claimed by one's co-sharers ".

Katyayana says : " What is taken under a standard (in

battle) is indivisible. What is seized in war after routing the forces of the enemy or by losing one's life for his master is called property acquired under a standard." Properly received from friends acquired without help of paternal property is not divisible. With regard to property acquired with such help, Vyasa says : "When property is acquired by valour and the like, with the aid of any common property, such as conveyance or a weapon, therein the brothers are sharers ; to him (the acquirer) two shares are to be given, the rest are equal sharers."

Katyayana says : "Never shall a learned man give wealth acquired by learning to the unlearned, but only to those who are equal or superior in learning, shall (share of) such wealth is given by the learned."

Narada says : "A learned man is not bound to give a share of his own acquired wealth against his will to an unlearned co-heir, unless it has been gained by him using the paternal estate. When one brother maintains the family of another brother, who is engaged in studying, he shall receive a share of the wealth gained by such study, though he be unlearned"

"Whatever property the eldest (son) acquires (by his own exertion) after the father's death, a share of that (shall belong) to his younger (brothers) provided they have made due pro gress in learning"*

Vidyanapalina means younger brothers who have studied other kinds of indivisible property are described by Manu:

"A, dress, property recorded in a document, ornaments, cooked food, water and women, Yogakshema and Prochara, or land for ingress or egress, they declare to be indivisible."

In this Patra has been interpreted by some as meaning vehicles but that is opposed to the text of Katyayana, which says : "But properly recorded in a document, what is settled for religious purposes, water, women and ancestral corrody ; worn clothes, ornaments, what is not suitable for partition, such things being enjoyed by the co parceners in a manner suited to the occassion ; the path for cows, the carriage, road, clothes that are actually worn on the body, what is required for use or what is intended for religious purposes should not be divided : so Vrihaspati declares."

Unsuitable means unsuitable for partition (These) should be used for periods in case of inequality in partition according to shares. What is mentioned about the indivisibility of clothes and the like refers to the things themselves but they are divisible according to value, as says Vrihaspati :

"Those by whom clothes and the likearticles have been declared indivisible,have not decided properly; the wealth of the rich depends on clothes and ornaments (Such wealth) when withheld

* This last text is identical with Manu 9. V. 204.

from partition will yield no profit; but neither can it be allotted to a single co-parcener. Therefore it has to be divided with some akill, or else, it would be useless. Clothes and ornaments are divided by selling them, a written bond after recovering the sum lent; prepared food by an exchange with unprepared food. The water of a well or pool shall be drawn and used according to need. A single female shall be successively set to work at their houses, according to their shares. If there are many, they shall be divided equally. The same rules applies to male slaves Gains from persons having Yogakshema shall be equally divided. Land for ingress and egress shall be divided according to share."

'A single female' means unenjoyed slave girl. In regard to enjoyed women, Gautama says, "Water, Yogakshema, prepared food are indivisible and so are enjoyed women."

(Explains the meaning of the words) Yogakshemabata labham. Possessing Yogakshema means a very rich person like a king; gains from such a person, by father and the like for the support of the family, should be equally divided.

Sankha Likhita says: "There can be no division of water pots, ornaments women and clothes. Water channel and carriage road are declared indivisible by Prajapati."

"If however, the common property be augmented, equal division is enjoined. In making division among several grandsons, regard should be had to the respective (portions of their deceased) fathers," (Yajnavalkya II. 121.)

Artha Samutthan means acquisition of wealth. There should be equal division among all when there is acquisition with the help of one another.

Manu says: "If undivided brethren together make an exertion for gain (the father) shall on no account give to them unequal shares."

This being so, it follows from it that in other things, unequal division by the father is valid. Again (Manu says:)

"But if all of them being unlearned acquire property by their labour, the division of that shall be equal, as it is not properly acquired by the father, that is settled rule."

Among undivided brothers, who are dead, if there is one son of one, two of a second and many of another, in such a case the partition is according to their fathers, (*i e.*) whatever share was the father's, that is taken by the sons, two or many and there is no equal division. This is the meaning

Vrihaspati says: "Whatever has been acquired by all together, in that property, they have all equal shares, their sons, whether unequal or equal (in number) are declared takers of their father's shares."

Katyayana says: "When a son dies undivided, his son shall be made sharer of the heritage, if he has not received maintenance from the grandfather. He shall get his paternal

share, either from the paternal uncle or his son. But the very same share should equitably belong to all the brothers. Or his son shall get it. After him there is cessation of right."

In case of an undivided brother dying, his son, when he has not received his share from the grandfather, takes the share of his father, from his uncle or his son. In the same manner his son and also his grandson take. Here a distinction is mentioned by Devala:

"Of members of the same family divided or undivided living together, there should be partition of the heritage among the descendants of the fourth degree: this ls settled; up to that degree the members of the family are of the same body. After that, there is difference of body. (It is desired that) there should be separation in body and wealth at the same time. This is the rule when there are many descendants of the same caste. If there is one descendant of the same caste, the heritage is not divided (but is taken by him alone"

Vishnu says: "Now follow the rules regarding partition among brothers. And (let it be delayed) until these widows who have no offspring bear a son."* Childless pregnant widows should be given the heritage, till they get a son. If no son is born, the share reverts. This follows from "until they bear sons."*

An exception is mentioned to the rule: "a father, when making partition, can divide among his sons as he pleases."

"Inasmuch as the ownership of father and son is coequal in the acquisitions of the grandfather, whether they be land, any settled property, or moveables, in them, the ownership of the father and son is equal." (Yajnavalkya II. 122).

In grandpaternal property, the grandson has equal right with his father. Therefore, even against his own wish the father must divide his father's property at the son's desire. There should be equal division. There cannot be unequal division, as in the case of selfacquired property. Nibandha means, property (settled saying) in this share, this field, this house or this much of property should be given.

Katyayana says: "In grandpaternal property, father and son have equal rights But in selfacquired property of the father, the son has got no right." This should be understood as meaning property acquired by the father, without living on the property of the grandfather.

Vyasa says: "Father and son are equal sharers in ancestral property, but in the property of the father (himself) the sons are not entitled to share against the will of the father."

Vrihaspati says: "Of property acquired by the grand-

* This is a text of Vasista.

father, whether immoveable or moveable, father and son are declared equal sharers. In grandpaternal property once lost and afterwards recovered by the father, and in what is acquired by learning or valour, the father's power of disposal is declared."

In grandpaternal property wrongfully taken by others and afterwards acquired by the father, through his own power or by learning, the father has sole right and sons have none. Therefore (Vrihaspati) has said " that wealth may be given away or enjoyed (by the father) at his pleasure. After his death, his sons are declared equal shares." Katyayana says: "Lost property recovered by the father by his own power or property acquired by himself; in all such property the sons cannot compel the father to give a share." What has been wrongfully stolen or lost and acquired by the father with his own power, the sons cannot compel the father to divide with them at partition.

Thus the Smritis speak of grandson's equal ownership with his father in all ancestral property. This is not inconsistent with the text of Veda "establishes the fire &c." because to avoid that inconsistency, it is explained that when there is a son, the father should not give away or enjoy the whole of the paternal wealth but should keep it after proper expense. The text should be explained as leaving out something which to be inferred. One when a son is born to him, does not lose his ownership of property (on that account), so that it may be inconsistent with the texts of the Veda enjoining performance of works, which can be accomplished with one's own wealth. Though that property is common to the father and the son, still the father can perform sacrifices, like the Agnihotra, with the consent of the son, by separating him or by acquiring other property. Nor does ownership arise from partition, so that before partition the father may not be owner. Partition places separate ownership of each one of the joint owners in the share of each one of them and does not produce what did not exist before. As in worldly affairs of partners or in Veda, of persons performing Satras, there is ownership in acquisition. If partition is cause of ownership, then it may be produced when there is partition by force. The text of Gautama which says: "ownership is by purchase, partition, acceptance and finding," refers to the production of the fact of ownership in the allotted share in partition.

"If a son be born of a wife of equal caste, after partition made, he is a sharer; or a share may be allotted him from the estate after allowing for income and expenditure."

(YajnavalkyaII, 122).

When the sons have been divided, an afterborn son by a wife of equal caste gets the share of the father; if there is no share of the father, he gets a share of fields &c., which

may be found after partition, after allowing for income and expenditure.

Manu says : "But a son born after partition shall alone take the property of his father, or if any be re-united with the father, he shall share with them."

A son born after partition takes the wealth of the father and not of the brothers. In the absence of the father or the brothers on a partition with those that have re-united with the father, he takes the father's share. So says Vrihaspati :

"When the half brothers or whole brothers have become separated from the father and they have brothers subsequently born, these latter shall take the father's share."

Though the share of those who had partitioned before be great and of the afterborn sons dividing the father's share be small, still they cannot take from the shares of the previously separated sons. He (Vrihaspati) also says

"One born before (partition) is not entitled to the paternal share, nor is one born after partition to the brother's share. What is acquired by the father after separation, belong to the afterborn son ; those born before are not entitled to it."

If by any of the above means the afterborn son does not get even a small share, then he takes from the share of the separated brothers. Vishnu says : "Sons who have separated from their father should give a share to one afterborn "

Another kind of indivisible property is indirectly mentioned.

"Whatever property may be given by the parents to any child, shall belong to him." (Yajnavalkya II, 123).

Before death or partition, whatever is given for pleasing him to a son by the father or mother belongs to him and should not be divided with the other sons.

Narada says : "Property gained by valour or belonging to a wife and the gains of science are three kinds of wealth not subject to partition, and so is a favour conferred by the father. When the mother has bestowed a portion of her property on any of her sons from affection, the rule is the same, for the mother is equal to the father."

Vyasa says : "Whatever is given out of affection to a (co-sharer) by the grandfather, by the father, or by the mother should not be taken away from him."

In the case of immoveable property an exceptional provision to the rule is mentioned by Narada :

"The father is master of the gems, pearls and corals and of all (other moveable property) ; but neither the father nor the grandfather is so of the immoveable property.

"By the affectionate gift of the father, the clothes and ornaments are gained ; immoveable property is not gained even with the father's favour."

Again : " If partition be made after the father's death the mother shall also have an equal share."

(Yajnavalkya II 123.)

On partition after the death of the father the mother gets a share equal to that of the sons dividing. The plural is intended (to include the singular). Therefore whatever is the share of each son that is also the mother's share. The word mother is used to mean also her co-widows.

Vyasa says : " But the sonless wives of the father are declared equal shares ; and all the grandmothers also are declared equal to mothers (as sharers)."

This refers to the case where no stridhana had been given.

Something else to be done by the sons separating is mentioned.

"Those younger brother whose initiatory ceremonies &c., have not been performed, those ceremonies of those brothers should be performed by the elder brothers. Unmarried sisters should be married by each brother giving one fourth of what is his own share." (Yajnavalkya II. 124.)

Narada says : " For those brothers for whom the initiatory ceremonies have not been performed by their father, they must be performed by the other brothers from the paternal property. Or if there is no paternal share, the previously initiated brothers should perform the initiatory ceremonies of the others from their own shares."

Vyasa says : " But amongst them those that are uninitiated should be initiated by the elder brothers from their paternal wealth ; as also the unmarried daughters according to law."

Manu says : " But to the maiden sisters the brothers shall severally give portions out of their own shares, each out of his own share one-fourth ; those who refuse to give will become outcasts."

Here also, the 'words from their own shares' refer to the share of the son. The plural is used to cover the case of many daughters. The repetition of the word 'own' is intended to cover the case of daughters of (mothers) of different castes. Here it should be mentioned that when a Brahman has wives of all castes and each has daughters, then the daughter of the Brahmani wife should get one fourth of the share of the Brahman son. Similarly the daughters of the wives of Kshatriya and other castes of a Brahman gets one fourth of the share of the son of the wife of the Kshatriya or other caste. This (share of the daughters) is not heritage. If it is said that the female deserves it, then it will be inconsistent with what Baudhayana : Heritage does not go to those without strength. Therefore women do not get the heritage." This finishes the matter of partition among sons of the same caste. Now partition among sons by wives of different castes is dealt with.

(The Commentaries on Yajnavalkya II. 126, 127, 128, 129, 130, 131, 132 and 133 about different kinds of sons are omitted as unimporant and as they are not different from the commentaries of Visvarupa and Vijnaneswara, except what is important on the question of adoption.)

There he who is given away by father and mother or by the father, or by the mother with her husband's permission becomes the Dattaka son of him to whom he is given.

Manu says : "That boy equal (by caste) whom his mother or his father affectionately gives with a libation of water, in times of distress must be considered an adopted son' (Manu 9 V 168.)

With water is to show that it takes the character of all gifts. In distress means during famine or in the distress or sonlessness of the taker. Equal means of equal caste. With affection means without being under fear and the like

(Manu says) : "An adopted son shall never take the family name and the estate of his natural father; the funeral cake follows the family name and estate ; the funeral offerings of him who gives (his son in adoption) cease (Manu 9 V 142)

From this the Dattaka does not take the wealth or Gotra of the first father nor does he give him Pinda but he takes the Gotra &c., of the second father and gives him Pinda. Pinda means all the obsequial ceremonies. This also applies to Kritima, Svayamdatta and Apabiddha son by analogy. Having thus ascertained thirteen kinds of sons the Brahmapurana describes the status of these in order (*Here cites text of Brahmapurana* the translation of which is to be found in Vol. I, Ch. V.)

Vasista says : " Man is formed of uterine blood and virile seed from his mother and father. The father and brother have the power to give, sell or abandon the son. But one should not give away the only son for he is to continue the line of the ancestors. Let a woman neither give nor receive a son, except with her husband's permission One when desirous of accepting a son shall assemble his kinsmen, announce his intention to the King, make burnt offerings in the middle of the house reciting the Vyahitris and take (as a son) one whose relations are not at distant places and who is not nearly related If a doubt arises when the relations of the boy are at a distance, he should be kept apart like a Sudra. For it is declared (in the Vedas) 'through one he saves money."

'Should not give away the only son' refers to one who makes a gift. By this in the matter of sale, etc. also this prohibition applies. 'When desirous of accepting' is mentioned to show that assembling of kinsmen and other ceremonies required by law are to be performed in case of sale by parity of reasoning. He whose kinsmen are not distant

is Adurebandhava. When one's kinsmen are not resident of distant places his being of good family can be known. Therefore a son whose 'kinsmen are not distant' *i.e.*, whose family respectability is known should be adopted. When there is nearness of relationship, the boy should not be adopted. This follows from the injunction to assemble the friends. One not nearly related should be adopted. When a doubt as to caste arises the adopted son whose kinsmen are distant should be kept apart like a Sudra till the matter is ascertained. It should be ascertained with great pains, is the meaning. For the following text of Veda is cited: "through one he saves many." Therefore one whose good birth is known should be adopted and not others.

The son purchased is he who is obtained by sale by his parents The Kritrima son is he who is made a son by one's own self by saying 'you become my son' He who gives himself by saying 'you become my son' He who gives himself by saying 'I am your son' is called Svayamdatta. He who is received in the womb of a girl being married is called Sahodhaja

Manu says: "He who is purchased from his parents for the purpose of taking a son whether like or unlike is called the son purchased"

Like or unlike is mentioned with refence to quality and not to caste.

(Manu says:) "One who being 'like' (to the adopter) having the qualities of the son after ascertaining his qualities and faults is made a son is called a Kritrima son."

In the above text the use of the word 'like' is in reference to caste.

"He who destitute of both parents or forsaken by them without cause gives himself to another is known as Svayamdatta." Being outcast is the only valid cause for forsaking Sparsaet means gives.

"She when pregnant whether the fact is known or unknown is married, her son is the son of the husband and is called 'Sahodha."

He who being forsaken by the parents without valid cause like Patitya is taken by another is called Apabiddha'.

Manu says: "He who being forsaken by both parents or by one is taken as a son is called Apabiddha."

"Of these twelve sons, failing each preceding one, the other offers the Pinda and takes the inheritance." Yajnavalkya II 134.

Of these primary and secondary sons beginning with the Aurasa son mentioned above failing each preceding one the one following is entitled to offer the Sraddha and to take the inheritance.

Of the different kinds of substitutes for son, only the Dattaka is valid during the Kalijuga. Therefore Shaunaka says : "the acceptance of sons other than Datta and Aurasa" is prohibited in the Kalijuga

When after the making of the Putrika an Aurasa son is born, Manu says "When after the Putrika has been made, a son is born, there is equal division and there is no right to preferential share"

Manu mentions a special rule in respect of the Kshetraja

"If in an undivided family there are Aurasa and Kshetraja sons, each takes the estate of his father and not the other." This establishes the right of the Khetraja Dvamusyayna to the wealth of the procreator.

Vasista speaks of a particular rule when after adoption there is an Aurasa son born · "If an Aurasa son is born after taking an adopted son, (the latter) takes a fourth share" The different rules of greater and less shares should be considered as alteratives depending on the worth of the adopted son. Though all the substitutes for sons take the heritage in order, still when it is said that some are 'takers of the heritage' and other are not, the intention of Manu and others is that among these substitutes for sons they only are heirs of sonless Sapindas of the father, who are described as "takers of wealth" and not the rest

A special rule is mentioned of all the above substitutes of sons.

"The rule is mentioned by me in respect of sons of the same caste" (Yajnavalkya I 135)

The Gudhotpanna and the others of the same caste can alone be accepted as sons and not others This is the meaning. The son of the Sudra wife procreated by one's self is not substituted son but legitimate son. Still he is called substituted son by Manu The meaning of it is that if there are sons born of wives of inferior castes there can be no substituted sons but even if there is a son of the Sudra wife a substituted son should be made

Manu says · "When there is a good son or if one is sonless, the Sudra wife's son can never be given more than one-tenth of this inheritance according to Law"

Of the sonless man the share remaining after the one-tenth had been given, the 'wife and the others' take. This is the meaning.

"Even the son begotten by a Sudra or a Dasi shall have such share as (the father) may allot (But if there be no partition till) after the father's death, then the brothers are to assign him half a share; if there be no brothers nor daughter's sons, he takes the whole" (Yajnavalkya II 135, 136.)

The son of Sudra by a female slave takes a share at the option of the father. He gets whatever share the father desires to give him. After the death of the father, the sons of married wives should give the half of what would be the share of each of them. When there are no brothers born of married wives and there is no daughter's son, he takes the whole. When there is a daughter's son, he (the son of the slave) takes half share. Here by the use of the word Sudra should be understood that the son by female slave of a Brahmana does not take any share of his father's estate.

The order of heirs of one who dies without leaving sons or substitutes for sons is mentioned:

"The lawfully wedded wife and the daughter's also both parents, brothers likewise, and their sons, gentiles, cognate, a pupil and a fellow-student, on failure of the first among them, the next in order is the heir to the estate of one who departed for heaven leaving no male issue. This rule extends to all classes." (Yajnavalkya II 137, 138.)

Of one who dies without leaving sons, principal or subsidiary, the takers of the heritage, the widow and others mentioned in order settled, take, the later mentioned in default of the one mentioned before. This rule applies to all castes.

Vrihaspati says: "In the revealed rule (of the Veda), or by the traditional law (of the Smritis) and by popular usage, the wife is declared to be half the body (of her husband), equally sharing the outcome of good and evil acts.

"Of him whose wife is not dead, half his body survives. How should any one else take the property, while half (his) body lives?

"Although kinsmen (Sakulyas), although his father and mother, although uterine brothers be living, the wife of him who dies without leaving male issue shall succeed to his share. A wife deceased before her husband takes away his consecrated fire (Agnihotra) but if the husband dies before the wife, she takes his property, if she is faithful to him, this is an eternal law.

"After having received all the moveable and immoveable property, the gold, base metals and grain, liquids and wearing apparel, she shall cause his monthly, six monthly and annual Sraddhas to be performed.

"Let her propitiate with funeral oblations and pious liberality, her husband's paternal uncles, gurus, daughter's son, sister's son, and maternal uncles; also aged or helpless persons, guests and women (belonging to the family")

Vishnu says: "The wealth of a man who dies without male issue goes to his wife; on failure of her to his daughter; on failure of her, to his father; on failure of him, to his mother; on failure of her, to his brother; on failure of him to his brother's son; on failure of him, to the relations called Bandhu; on failure of them to the relations called Sakulya;

on failure of them, to a fellow student ; on failure of him, it goes to the king, with the exception of a Brahmana's property."

Vrihaspati says : "When a man dies without leaving issue, wife, father or mother, all his Sapindas shall divide his property in due shares."

Sankha lays down the order of succession. "The wealth of a person dying sonless goes to his brother, in his default, mother and father take or the eldest widow."

Devala says : "Then the uterine brothers shall divide the heritage of a sonless person, or the daughters of the same caste, or the surviving father, half brothers of the same caste, the mother and the widow, according to the order mentioned."

Narada also says : "If among several brothers one childless should die or become a religious ascetic the others shall divide his property, excepting the Sridhana. They shall make provision for his women till they die, in case they remain faithful to the bed of their husband. Of those women living otherwise, they must cut off the allowance."

And also : "Unless it should be the property of a Brahman. A king devoted to law must allot a maintenance to his women. Thus has the law of inheritance been declared."

These texts, which apparently seem conflicting, should be considered as all of authority and reconciled as being applicable to different subjects. Here some say that "she who at the request of the Guru, father-in-law and the like desires a son by the husband's younger brother or by another Sapinda," it is of such a widow that the text "the widow, the daughter &c." speaks. This is not correct. It is difficult to avoid conflict of many other Smritis with this position For Vasista says: "There is no Niyoga with the desire for wealth" By this text the want of right to Niyoga of the widow who takes the wealth is indicated. If it is said, 'let there be no Niyoga for getting the inheritance but the text "widow, daughters &c." refers to a widow previously appointed, who takes the wealth subsequently' This also is incorrect. For in that case, by the Kshetraja son to be born the deceased owner of wealth becomes possessed of a son. (Therefore) the widow takes the wealth of the sonless man and by the text "widow, daughters &c." that rule is laid down. Therefore Manu says : "He who takes the wealth or the widow of a deceased brother, having produced a son to that brother should give the wealth to him." The text says (should give) to the son and not to his mother.

"Of a deceased sonless person, a son (by Niyoga) should be obtained from persons of the same Gotra. His share of the heritage should be given to that son."

Here (should give to the) *tantu* means to the son. How can therefore the desire for Niyoga be the cause for taking the

wealth ? Gautama makes the conflict clear : " The inheritance is taken by those connected with Pinda, Gotra and wealth, or the widow of the sonless man, or she may raise a son by Niyoga."

This shows that the desire to raise issue by Niyoga is an alternative to inheriting the estate of the sonless husband. Here is clear conflict. Vridha Manu also says · " A sonless widow who keeps the bed of her husband unsullied and who performs the austerities of widows, shall alone give the Pinda and take the entire estate." This makes clear that the widow who desires Niyoga cannot take the wealth. If that were so, " keeping the bed of her husband unsullied " could not be said. Therefore this decision is not right How is the conflict to be reconciled ? The widow having the qualifications spoken of in the text of Manu : " A sonless widow who keeps the bed &c." takes herself the entire estate of the husband even when there are the father and the brother, and also performs the Sraddha of the husband. To this intent Vrihaspati says : The son should perform the ceremonies of giving Pinda and libation of water, failing the son, the wife, failing her, the brother."

She who had properly served the husband, who has himself acquired wealth without the aid of the father's estate, should take the husband's entire estate, even when the husband's younger brothers exist. But when on account of the youth of the widow there is possibility of adultery, the estate goes to the husband's brother and not to the widow. There also is this decision : if the deceased acquired wealth jointly with the brothers without detriment to the father's wealth, then even if the parents be living, the brothers take the wealth. If the property is anscestral, then the parents take and not the brothers. Thus by applying differing texts to different circumstances, they are all reconciled. Nor should it be said, how the widow, who is incompetent to perform sacrifices singly, should take property, the object of which is sacrifice, for there is want of authority to establish that accrual of all kinds of right to wealth has sacrifice for object.

The accrual of wealth by virtue of the text, " for twelve nights the initiate should get wages ;" that alone is for the purposes of sacrifice ; otherwise, it is for human purposes. The text, which is only declaratory " that women are without strength and therefore no heirs " is only a statement of the fact of the widows not getting and should be interpreted as applying to the case when they have sons. Women have the right singly to perform Purta or words of conservation (like digging tanks). Therefore, she may appropriate wealth for that purpose. What Narada has laid down after saying " if among brothers one should die childless " that " their females should be maintained for life," that should be understood referring to twice-married women or concubines,

on account of the use of the word Stree. The word Patni (used by Yajnavalkya) applies to wives connected with the marriage sacrifice by virtue of the Smriti that "(a wife becomes) the husband's by being connected with sacrifice." In the absence of such a Patni or widow, daughters of the same caste with the father take the heritage of the sonless man.

Narada says : "On failure of a son, the daughter succeeds, because she continues the lineage just like a son. The son and daughter both equally continue the lineage of the father."

So also (Manu says): "A son is even as one's self, a daughter is equal to a son ; how can another take the estate while (such a daughter who is) one's self lives."

Vrihaspati says : "A daughter, like a son, springs from each member of a man. How then shall any other person inherit her father's property while she lives.

"Equal in caste (to her father) and married to a man of the same caste as her own, virtuous, habitually submissive, she shall inherit her father's property, whether she may have been (expressly) appointed or not."

(Here) 'equal' means of equal caste Therefore daughters of unequal caste are not entitled to inherit. Appointed or unappointed means Putrika. Here by "appointed or unappointed" the Putrika is mentioned as an illustration ; her heirship of the sonless father is not laid down, in as much as it cannot be said that the father of the Putrika is sonless because the Putrika is considered a son. So says Vasista "the third (son) is mentioned in the Vedas as Putrika." By this, the position of those who say that the word 'daughter, in the text "widow, daughters etc.," means Putrika, is refuted

Mother and father make the word Pitarau. They take the heritage of the son who has no widow or daughters.

"Vrihaspati says : "When a man dies without leaving a widow or son, his mother takes his wealth or his brother with permission."

Manu says : "A mother shall obtain the inheritance of a son who dies without issue and if the mother be dead, the paternal grandmother shall take the estate."

In the absence of the parents, the brothers take, who are born of the same mother, because of their nearer consanguinity. They alone are entitled to perform the Sradha of the mother's side of the dead brother and not the stepbrothers. The text of Sankha Likhita and Paithinasi : "the wealth of the sonless man goes to the brother ; in his default to the parents or the eldest widow," should be understood to refer to brothers, who have jointly acquired wealth without detriment to the paternal estate. In the absence of such brothers, the parents or the eldest widow take. Those brothers, who satisfy the above description, however,

take in supersession of the order mentioned by Yajnavalkya. Thus all texts are reconciled. As regards the text of Devala: "then the utrine brother shall divide the heritage of a sonless person, or the daughters of same caste, or the surviving father, half brothers of the same caste, the mother and the widow, according to the order mentioned", here also, it should be understood that uterine brothers take the inheritance first, in accordance with the rule of Sankha (mentioned above). In the absence of brothers, their sons take. In their absence, Gotrajas take; the nearer has precedence among them, as says Manu: "always to that (relative within three degrees), who is nearest to the (deceased) Sapinda the estate shall belong." The order is also described by him : "To the three (ancestors) water must be offered ; to the three the Pinda is given ; the fourth descendant is the giver of these oblations ; the fifth has no connection (with them)."

A person who offers oblations of water etc., to his three ancestors, who are joined for purposes of Sraddha and his descendant also who offers water to them, of these, the one is near Sapinda to the other. He the uterine brother is exceedingly near, because of equal right to offer oblations of water etc. His son is a little more distant, because of his offering Pinda (separately) to his own father. His grandson is more distant, because he offers Pinda to his father and grandfather separately. His greatgrandson is very distant because he offers all three Pundas separately. Thus among father's descendants, the brother, the brother's son and brother's grandson are near Sapindas. Thus also in the case of grandfather's and greatgrandfather's children. In default of all these, the three descendants of the greatgrandsons of the three ancestors beginning with the father take the heritage on account of Sapinda relationship. In the absence of Gotrajas, Bandhus like the sons of the father's sister, mother's sister and mother's brother, take. In their default, a disciple, who has been invested with the sacred thread and taught the Vedas by the deceased, takes the wealth. In his default, a fellow student having the same teacher.

What Katyayana says: in "if a man dies separate his property is taken by the father, in default of son, or brothers, or mother or father's mother," is for showing the absence of sons. By that the absence of widow and daughters is also meant.

In the absence of the father, the mother takes or the brother when permitted by the mother, from the text of Vrihaspati : "the mother takes the heritage or the brother with her permission." In the absence of these persons the father's mother of the deceased takes after the daughter and daughter's son.

Vrihaspati says : "In default of them, uterine brothers or brother's sons, agnates (Sakulyas) and Bandhavas (cognates),

pupils and learned Brahmins are entitled to the inheritance.'

Narada says : "In the absence of daughters, the Sakulyas after them, the Bandhavas, next a member of the same caste, in default of all, the wealth goes to the King. Unless it should be the property of a Brahmana. A king devoted to law must allot a maintenance to his women. Thus has the law of inheritance been declared."

In this text 'in the absence of daughters' implies also the absence of the parents. "His women" means unmarried mistresses, concubines and remarried-widow wives.

Manu says : "On failure of all heirs, Brahmanas, who are versed in the three Vedas and are pure and self-controlled, shall share the estate ; thus the law is not violated. The property of a Brahmana must never be taken by the king, that is the settled rule ; but the property of men of other castes the king may take, on failure of all heirs."

The King means the protector of the kingdom.

Vrihaspati says : "Should a Kshatriya, a Vaisya or a Sudra die without leaving male issue or wife or brother, his property should be taken by the King, for he is lord of all."

Paithinashi says : "The property of a Srotriya goes to the assembly of Brahmins and not to the King. The King should not also take the wealth devoted for the gods, nor property kept in deposit or pledge, nor the property of minors and women. To that effect is said : the wealth of women and of minors should not be taken by the King ; the property of women is acquired in six modes, minors have only paternal property."

Smriti says : "He who takes one's property should perform his Sraddha and offer the Pinda of three persons."

By 'Pinda of three persons' is meant the Sraddha of the new moon.

Vishnu says : "therefore even when one does not get paternal wealth, he should offer the Pinda."

In respect of the text "widow daughter etc." some say : 'A woman with husband is entitled to perform Ishta and Purta works and not singly. When without husband, she should not enjoy the objects of desire but should lead a life of great austerity. Wealth which cannot be employed in religious works or works for worldly desire is not wealth for human purposes. Therefore while there are father and others, who are deserving of spending for religious work or work for desire, the widow does not take the heritage. Therefore the widow of a sonless man gets so much of the wealth as suffices for her bare necessities and no more. This is the meaning of the text. As regards the heritable right of daughters that refers to their getting so much of the wealth,

of the man, who left no wife, as suffices for their marriage. Anything more than this, even when there are the widow and the daughter, is taken by the Sapindas like the father. This follows from the meaning of the texts of Sankha and others This (the above position) is incorrect. When the owner of property dies, the right of ownership of another accrues to it, as says Bhagaban ; " the ownership of widow and daughters exist as having arisen before and has not to be caused to accrue." From the text of Apastamba " from marriage arises unity of interest" the right of the wife to husband's property is given by marriage. The right of ownership of daughters arises by birth as in the case of sons. Therefore when there are widow and daughter, by denying their right, the rule of the owership of father etc., should not be laid down from this text. If (according to the objector) it refers to the case in their default, the text would get the strange meaning that it refers to the right of the father irrespective of the bar of the existence of the widow and daughters. To avoid that, it should be understood that in the absence of the widow etc., the father etc. inherit. What Sankha says about the right of the widow in the absence of the father etc., that refers to the case where the right, which is the foundation of her title, is lost for other reasons. Other reasons are also mentioned in the text : " (the adulteress is to be allowed to live), deprived of her rights, poorly dressed" etc. This refers to the loss of ownership in the husband's property of the widow. Therefore the decision mentioned before is proper. The position that the wealth over and above what is necessary for the bare necessities of women is objectless, is also not correct. It has been laid down that women have right to religious acts like making gifts, which are other than those for the performances of which mantras and fire are required. Therefore they get property, which they can thus appropriate independently. Next is mentioned the order of heirs of persons in orders of life other than that of the householder.

"The heirs to the property of a hermit of an ascetic and of a student in theology are in order, the preceptor, a virtuous pupil and a spirtual brother belonging to the same hermitage."

Yajnavalkya II. 139.

Of any one of those beginning with the hermit dying, the wealth is taken by the preceptor and others in order. Failing one the next in order takes. This is the meaning. Good disciple means one with good qualities. Brother in holiness means having a common preceptor. Ekatirthi means belonging to the same order or residing in the same sacred place like Benares. The hermit may have wealth from the text : " he should give up all savings in the month of Aswin." The ascetic and the professed student also may possess some little property like the cloth covering made of rags.

• The heritage of a sonless brother, when there are no widow, daughters or parents, belongs to the brother. This rule has been laid down. A qualification of it is now mentioned.

"A reunited brother shall keep the share of his reunited co-heir, who is deceased or deliver it to (a son subsequently born). But an uterine brother shall thus retain or deliver allotment to his uterine relation.

"A half brother reunited with the deceased may take the succession but not a half brother though not reunited : but one united may obtain the property and not exclusively the son of a different mother." Yajnavalkya II. 141.

The mixing of separated property with other separated property is called reunion. One having that is called reunited. When he is dead, his wealth is taken by the reunited brother. The brother here means uterine brother and not halfbrother, even if he be reunited. The surviving reunited brother should give to the afterborn son of a deceased reunited brother his share. This is mentioned in this connection. Here Vrihaspati says :

"He who having divided is again living through affection. together with his father or brother, or with his uncle even is said to be reunited with them."

By this text is mentioned that there are three kinds of reunited members. Among these, the share of the reunited sonless member is taken by the reunited uterine brother. On a question being asked whether this rule is against the right of widows etc., when they exist, (Vrihaspati) says :

"When any one brother should die or any how renounce worldly interests, his share is not lost ; it is alloted to his uterine brother."

"If there be a sister, she is entitled to a share of his property. This is the law regarding the wealth of one destitute of issue and who has no wife or father."

From this, therefore if widows etc, of the reunited exist, then the order of heirs is "widow, daughters etc." (only of that rule a qualification is introduced that) among all brothers entitled to succeed, when there is a reunited uterine brother, he alone takes. The text should be understood to mean the right of the sister to share in default of the uterine brother, otherwise there will be conflict with the Vedic text : "therefore women are without strength and non-heirs." It is said that the share of the reunited member, who is dead, is taken by the reunited uterine brother. In other cases, to make it clear the text says : "the half brother if reunited takes but not the half brother not reunited." The meaning is clear. When the half brother is reunited but not the full brother, who succeeds ? With reference to this, the text says : "the full brother though not re-

united tåkes but not the half brother." The full brother even if not reunited takes but not the reunited half brother. The adjective, reunited, of the half brother should be understood from the words even if not reunited. Therefore this is established: When there are both qualifications, being born of the same mother and reunion, the reunited uterine brother alone takes. When there is reunion with the half brother, then being born of the same mother is the cause of succession and not the other.

Manu says : "If brothers once divided and living again together make a second partition, the division in that case shall be equal in such a case there is no right to preferential share of the eldest."

By this unequal partition on account of preferential share of the eldest is prohibited but not for other reasons. Therefore, at the time of reunion whatever property of one is mixed up, he should get in accordance with that. Here also a qualification is mentioned by Vrihaspati :

"If the eldest or the youngest brother is deprived of his share or if either of them dies, his share is not lost. His uterine brothers having assembled together shall equally divide it and those brothers, who were reunited with him and reunited sisters."

"If among reunited coparceners any one should acquire property through learning, valour and the like a double share must be given to him ; the rest shall take equal shares."

'Giving share' means partition ; deprivation of that means want of right on account of having become an ascetic or outcaste etc. The share of such a one is not lost *i e.* it should be taken into account. This is the meaning That share is taken by the uterine reunited brothers, if any and not by the unreunited uterine brothers. In the absence of the reunited full brother, all the full brothers take together in equal shares. There being none who is superior, there should be no unequal division. In the absence of uterine brothers, the uterine sisters take it. In their absence, brothers and sisters born of stepmothers.

(Now) mentions those who are debarred from the right of share in partition.

"An impotent person, an outcast, (because of a grave sin like the murder of a Brahmana, &c.) and his issue, one lame, a madman, an idiot, a blind man, and a person afflicted with an incurable disease, as well as others (similarly disqualified) must be maintained being excluded from participation."

(Yajnavalkya II. 140.)

The impotent and others are shareless. They should be deprived of share (on partition). But they should be maintained. Kliva means impotent. Patita is described. His son means one procreated by the outcast though such son is included in the word Patita as Vasista says :—"the son of the Patita be-

comes Patita." Still he should be separately mentioned, as otherwise, he will come under the text : "Their sons Aurasa and Kshetraja etc" Pangu means deprived of leg. Mad means afflicted with the disease of insanity. Jada means idiot. Blind means without eyes. Achititsitaroga means afflicted with incurable disease. The word *adya* is used for including all disqualified heirs mentioned in other Shastras.

In this connection Narada says : "One hostile to his father or outcast or impotent or one who has committed a grave offence, shall not even take a share, even if he is a legitimate son ; much less so, if he is a Kshetraja son."

Pitridvit means hostile to the father. Aupapatic means one who has committed a grave sin (not of the first degree.)

Manu says : "All brothers who habitually commit forbidden acts are unworthy of the share of the property (and so are) those afflicted with longstanding and incurable disease, the idiot, the insane and the lame"

"Eunuchs and outcasts, born blind or deaf, the insane, idiots and the mute, as well as those deficient in any organ, receive no share"

Vasista says : "But those who have entered a different order receives no share."

Katyayana says : "Thus also the son of a woman married in an irregular order and one born of the wife of the same Gotra as well as an apostate from a religious order are unworthy of the inheritance"

Married in irregular order i.e., in the order not according to the castes. Her son is the son of one married in irregular order. The son of one by a wife of the same Gotra. The persons thus mentioned are excluded, because of express texts and not because they are not entitled to perform religious works, for there is no reason for their being not so entitled. Though there is incompetence to perform religious works of the Patita, there is no such incompetence of the blind, the lame and others. They have no right to perform special rites, which include parts requiring seeing the sacrifice and the like, still there is no general incompetence to perform all religious works. They surely have right mentioned in the Grihya Sutras to Ishta works (*i.e*, works performed with fire consecrated according to Vedic or Smriti rules). They can be married.

For Manu says : "If the eunuch and the rest should somehow or other desire to take wives, the offspring of such among them as have children is worthy of a share."

From this text showing the marriage of the impotent etc., their investiture with the sacred thread is understood. It cannot be said that this text refers to the case where after marriage, the defects of blindness etc., arise. Then the word born blind would not have been used in the previous text. Supposing that the born blind etc., have no right to perform

Ishta ceremonies, because of want of marriage and Upanayana, still they have right to Purta or conservatory works (such as digging tanks), like the Sudras. Therefore these persons are not disqualified because of their incompetence to perform religious works but because of special texts.

Baudhayana says: "Granting food, clothes &c, they shall support those who are incapable of transacting legal business, *viz*, the blind, the idiot, the eunuch, one immersed in vice, the incurably diseased and so forth, and those who do not have recourse to proper means of livelihood; excepting the outcast and his issue."

Karma means proper means of livelihood like agriculture. They who do not have resort to such proper means are *Akarmina*.

'Except the outcast and his issue' means excepting the outcast and his issue, the rest should be maintained. Yajnavalkya refutes the position that because the impotent and the others are excluded their sons also are also excluded.

"But their sons, legitimate or Kshetraja, are entitled to allotments, if free from similar defects. Their daughters must be maintained likewise, until they are made over to husbands. And their sonless wives conducting themselves aright, must be supported; but such as are unchaste should be expelled, and so indeed those who are perverse."

(Yajnavalkya II. 142-143.)

The Aurasa and Kshetraja sons of these, the impotent and others, if without similar defects like Patitya, are entitled to shares. Children are born to impotent persons by means of medical treatment. Their daughters are to be maintained till marriage. The sonless wives of these persons, if chaste, should be maintained; if unchaste and opposed to husband's younger brother and the like, they should be banished *i.e.*, turned out of house. The daughters born of the outcast also, should be maintained and married as says Vasista: "The issue of the outcast are declared outcast, excepting a female child, for she goes to another."

In the absence of the right of women to inheritance, the nature of Stridhana is described before mentioning the heirs of Stridhana.

"What was given to a woman by the father, mother, son or a brother or received by her at the nuptial fire, or presented to her on her husband's marriage to another wife, as also any other separate acquisition is denominated a woman's property."

(Yajnavalkya II. 144)

(Stridhana is) whatever is given by father and others. Whatever is received near the fire at marriage is called Adhyagni. What is given for supersession is called Adhivedanika Marrying another wife during the lifetime of the first wife is called supersession. The word Cha (after Adhi-

vedanika) means 'and others.' By that, other kinds of Stridhana are indicated. They are (as indicated in the texts): "the wife is to be made equal sharer (on partition)"; "the mother also takes an equal share (on partition) "(brothers should give to sisters) from the share of every one, one fourth," "the mother's ornaments, the daughters divide". Anything else also, of which the ownership belongs to females which is described as Stridhana by Manu and (other Rishis.)

Katyayana says: "Whatever is given to women at the time of their marriage, before the sacred fire, which is the witness of nuptials, is denominated by sages the property given before the nuptial fire. What a woman receives while she is led from her father's house to the house of her husband is called the property of a woman given at the bridal procession Whatever is given through affection by the mother-in-law or the father-in-law on the occasion of her salutation by touching the feet is called 'gains of amiability.' Whatever is received by a married woman or by a maiden, from the husband's father's family, from brother or from parents is called Saudayika."

Vrddha Vyasa says: "The property which is received by a maiden at her marriage or afterwards from her father's or hnsband's house is termed Saudayika"

Again (he says): "Whatever is given to the bridegroom at the time of marriage, that property belongs to the bride and should not be divided at partition by the kinsmen."

Katyayana says: "The independence of women who have received Saudayika is recognized in that property; for it is given by their kindred for their maintenance to avoid sin. Power of women over Saudayika property is declared to make sale and gift according to their pleasure, even in the case of immoveables."

As regards the text of Narada: "What has been given to a wife by her loving husband, that she may spend or give away, as she likes, after his death even, excepting immoveables", it refers to immoveable property which is Pritidatta (or given by the husband out of affection)

Katyayana says: "Whatever is received by a woman after marriage from her husband's family or from her own family is called a 'gift subsequent.' Whatever is received as a price (or bribe) by women (for sending their husbands to work) on houses, on furniture, on carriages, on milking, on utensils and on ornaments is called Sulka."

Vyasa says: "Property to the extent of two thousand Panas should be given to the wife. Such property as is given by the husband, she may enjoy according to her pleasure."

Every year a part of the heritage, the extreme limit of which is two thousand Karshapanas, may be given to the wife. *Para* means extreme limit. *Daya* means what is given. That heritage or what is given by the husband, a woman may get

according to her pleasure in manner not prohibited, without the permission of the husband's younger brother and the like. Above that, the permission of the husband's younger brother and the like is required : this is to be understood.

Manu says : "The ornaments which may have been worn by women during their husband's lifetime, his heirs shall not divide. Those who divide them become outcasts."

This refers to ornaments always worn.

Katyayana says . "Neither the husband, nor the son, nor the father, nor the brothers can assume power over a woman's porperty to take or bestow it. If any of these persons by force consume the woman's property, he shall be compelled to make it good with interest and shall be punished. As long as she is living, the husband, the sons, the husband's younger brothers and the kinsmen of the father have no power in respect of her Stridhana (and) if they deprive her of it, they should be punished."

Manu says : "(As long as a woman is) living, those kinsmen of hers who deprive her (of Stridhana) should be punished by a virtuous king."

The Bandhavas have right to the wealth of dead women in certain forms of marriage With this object "while living" &c, is mentioned in the above text.

The object with which Stridhana has been defined is now mentioned.

"That which has been given to her by her kindred as well as her fee or gratuity or any things bestowed after marriage, her kinsmen take it, if she die without issue."

(Yajnavalkya II. 145.)

Whatever is given by Bandhus *i.e.*, by paternal uncle, maternal uncle and the like, the Sulka and what is Anvadheyaka : by the mention of these, all kinds of Stridhana being indicated; such wealth of women dying childless, the Bandhavas obtain, *i.e*, it attaches to the Bandhavas. This is the meaning.

It has been said generally that the Bandhavas get. Now are specified the particular property and the particular Bandhavas who obtain it

"The property of a childless woman married in the form denominated Brahma or in any of the four (unblamed modes of marriage) goes to her husband ; but if she have progeny, it will go to her daughters and in other forms of marriage (Asura &c.), it goes to her father." (Yajnavalkya II. 146.)

The wealth of a deceased childless woman, who had been married in any of the forms Brahma, Daiva, Arsha and Prajapatya, goes to the husband ; if married in any of the forms Asura, Gandharva, Rakshasa and Paisacha, it goes to the father. If she left issue, her property goes to her daughters. This is applicable in all kinds of marriage. The meaning is that the daughters take, even when there are sons. From the text

"the mother's property is taken by *daughters*" the meaning is gathered. The order of succession is not there mentioned There-fore Katyayana says : "In the absence of daughter, (women's) wealth is taken by sons. Bandhudatta goes to the husband in default of Bandhus." The latter portion refers to one married according to the four forms Asura and the rest.

Manu says : "the property given to a woman by her father is taken by the Brahmani daughter or by her issue." Again when (Manu) says · "(the wealth of a woman) married in the forms, Brahma, Daiva, Arsha, Gandharva and Prajapatya, goes to her husband on her dying childless," by the mention of the Gandharva, is meant that there is an altern^tive rule by which the wealth of one married according to the Gandharva form may go to the husband (instead of going to the father), because he also says :

"But it is prescribed that the property which may have been given to a woman married in forms beginning with the Asura goes to her mother and father, if she dies with-out issue."

The marriage fee of the girl married in the Asura form, is taken by the uterine brothers ; failing them by the mother, as has been declared by Gautama :

"The sister's fee belongs to her uterine brothers, if her mother be dead."

Baudhayana (says) : "The heritage of a deceased maiden her uterine brothers shall take ; failing them, it belongs to the mother ; failing her to the father."

Manu says : "When a Putrika dies childless, her hus-band takes her estate without hesitation."

This refers to the case of the daughter made Putrika with the intention that her son would be her father's son. But when the daughter herself is declared a son and thus made Putrika, Sankha Likhita says "the husband does not take the wealth of a deceased Putrika" Paithinasi says :

"The property of a Putrika is not taken by her husband ; on her dying childless, it is taken by the mother or by mother-in-law."

Vrihaspati (says) : The mother's sister, the wife of a maternal uncle, a paternal uncle's wife, a father's sister, a mother-in-law and an elder brother's wife, are declared to be equal to a mother. If they have no legitimate son of the body, no other son, nor daughter's son nor their son, their sister's son etc. shall inherit the property."

The wife of the earlier born or the elder brother is Pur-bajapatni.

Dealing about the succession of Stridhana, speaks something about the affianced daughter,

"For detaining a damsel, after affiancing her, the offender should be fined and should also make good the expenditure together with interest. If she die (after troth plighted) let the bridegroom take back the gifts which he had presented ; paying however the charges on both sides."

(Yajnavalkya II, 147.)

If one having promised his daughter in marriage to a bridegroom not tainted with defects like impotence, having got hold of another better bridegroom, does not marry her to the first, he should be punished by the king. He should pay to the first bridegroom the amount of money spent by him together with interest *i.e.*, he should be made to pay by the king. Likewise, if the bride dies before marriage, whatever money had been given by the bridegroom to the father, he should get back from the bride's father after deduction of the amount spent for the purposes of marriage.

It has been mentioned that the husband takes in respect of particular kinds of property of the dead wife. Now says that the husband need not pay to the wife the Stridhana taken by him during famine etc.

"A husband is not liable to make good the property of his wife taken by him in a famine or for the performance of a duty, or during illness or while under restraint."

(Yajnavalkya II, 148.)

Famine means want of food. Religious works mean what are necessary and not what are optional and dictated by desire. Disease means disease serious and of long standing. For the treatment of such disease (Stridhana may be taken). Restraint means, being bound with shackles etc. For these purposes, when there is no property of his own, the husband by taking Stridhana may overcome his difficulties. If he has not got the power to repay, he need not do so. This refers to the circumstance when he cannot get money by borrowing. Therefore Devala says :

"Property given for her maintenance, ornaments, property given to the bride by the husband for marriage, and wealth gained from kinsmen become Stridhana. She herself exclusively enjoys it ; her husband has no right to use it, except in distress. Whenever Stridhana as needlessly disposed or enjoyed by the husband, it is returnable with interest. The appropriation of Stridhana for the relief of a son is proper."

Needless waste mentioned in the text means expenditure for gambling, music and the like. Enjoyment means eating, drinking and the like. For the relief of the son in danger Stridhana can be appropriated. This is the meaning.

Katyayana says :

"Neither the husband nor the son, nor the father nor

the brothers have power to take or dispose of Stridhana. If any of these persons by force consume the Stridhana, he shall be compelled to return it with interest and shall be punished If with the permission of the woman, out of affection, such property is enjoyed by one, he should return it at his pleasure, only the principal, if he is rich But when knowing the husband to be ill, in distress or oppressed by creditors property is given by a wife, it may be returned at pleasure."

The property given by a woman to save the husband from calamities like disease, the husband may return at his pleasure.

(Katyayana says) "If the husband has got two wives, and does not love (one of them), he should be compelled to return such Stridhana of hers as she might have given to him out of affection

"If food, raiment and residence be withheld from women, they may exact their own (Stridhana) and may likewise take a share from the heirs This is the law laid down by Likhita. When she has got them, she shall live in the husband's family."

This is the rule according to the Rishi Likhita It also refers to the case when the liability to pay the Stridhana payable by the husband has devolved on the son When the wife has got the Stridhana, she should reside in the husband's family and not elsewhere

(Katyayana says): "But if she be afflicted with disease and in danger of life, she may remove to her father's family.

"If she commits mischief, is shameless or wastes wealth or is unchaste, she does not deserve Stridhana. Wealth is made for sacrifice Therefore it should be appropriated to fit and virtuous persons, and not to women, and ignorant men or infidels.

"The Stridhana promised by the husband (to the wife) should be paid by the sons as a debt (of his), if she lives with the family of her husband or father"

Now (Yajnavalkya) speaks of the matter of supersession.

"To a woman whose husband marries a second wife, let him give an equal sum for the supersession, provided no separate property have been bestowed on her; but, if any have been assigned let him allot half." (Yajnavalkya II, 149.)

If another wife is married, during the lifetime of the first, the latter is called Adhibhinna wife. (The text speaks of) such wife. Adhivedanika is the wealth given for or while superseding her Equal (should be given). Equal to what? It should be understood equal to what is given to the second wife at marriage. This should be given to her to whom Stridhana had not been given. If it had been given, half should be given and not an equal amount. Here half does not mean equal division. It means, when Stridhana had been given so much should be given as, together with the

Stridhana would be equal to what is given to the second wife.

When there is dispute whether there is partition or not, the modes of ascertaining partition are mentioned

"When partition is denied, the fact of it may be ascertained by the evidence of kinsmen, relatives and witnesses and by written proof or by separate possession of house or field."

(Yajnavalkya II, 150)

'There has been no partition among us' when this contention is raised, partition should be ascertained from relations etc, likewise from separate houses and fields. Relations means witnesses in partition; from Jnatis and other relatives being (usually) such witnesses. House and field are mentioned as they are considered in connection with evidence of partition in other Shastras.

Narada (says). "Giving, receiving, cattle, food, houses, fields and servants are separate of divided brothers and so are cooking, religious duties, income and expenditure. The acts of giving evidence, of becoming surety, of giving and of taking may be mutually performed by divided brothers and not be unseparated ones. Of those who transact such matters as these publicly with their co-heirs, should be considered as separate, even though there be no written deed (of partition)."

Vrihaspati (says): "Those who keep the income, and expenditure separate and mutually lend money on interest and those who trade separately are separate without doubt."

Banikpatha means trading.

Narada (says): "When persons, who are descendants of one man, are separate in religious duties and in business transactions and make gain or incur loss separately and do not agree and act jointly in their dealings, they are quite at liberty to perform, according to their own pleasure, all (such transactions as) gift or sale of their own shares; they are masters of their own wealth."

The meaning of this is: If the brothers with the permission of one another do religious works requiring expenditure of money or if they do agricultural and other works requiring expenditure of separate wealth or make separate gain or incur separate loss or are disagreed in other things and in society and village affairs, they should be considered separate. They can at pleasure dispose of their share by sale and the like.

Vrihaspati says: "When a share has been enjoyed by a coparcener, that should not be disturbed." Again: "When a person contests a partition made of his own will, he should be made to abide by his own share and if he persists in his contention, he should be punished by the king."

Anubandha means persistence.

Katyayana says: "Those brothers, who for ten years continue to live separate in respect of religious duties and business transactions, should be regarded as separate in regard to

paternal property. Kinsmen, whether divided in interest or not, have an equal claim to the immoveable property (of the family); a single coparcener has no power to make a gift of it, to mortgage or to sell it"

Co-heirs whether separate or joint, have equal right in immoveable property. Among them, one has no power to make a gift and the like in respect of it. This is the meaning.

This concludes the Chapter on Partition of Heritage in the Commentary, called Apararka, of the Yajnavalkya Dharma Shastra, composed by Aparaditya Deva, the descendant of the Shilahar King Gimutavahana of the family of Vidyadhara.

अपरार्कः

दायविभागप्रकरणम् ।

उक्तमृणादानाख्यं निक्षेपाख्यं च व्यवहारपदं, तदङ्गतया च प्रमाणान्यपि मानुषाणि दिव्यानि च । अथेदानीं विभागाख्यं व्यवहारपदमारभते—

विभागं चेत्पिता कुर्यादिच्छया विभजेत्सुतान् ।
ज्येष्ठं वा श्रेष्ठभागेन सर्वे वा स्युः समांशिनः ॥ ११४ ॥

पित्रादिधनस्य पुत्रादीनुद्दिश्य विविच्य भागकरणं विभागः । तत्र पितृधनं पिता विभजेदित्युत्सर्गः । हेतुविशेषे तु पुत्रा अपि विभजन्ते, तदुपरिष्टाद्वक्ष्यते । तत्र यदि पिता विभजेत्तदिच्छया न्यूनाधिकविभागविषयान्सुतानुद्दिश्य धनं विभजेत् । अस्य धनस्यायमंशस्तवायमंशस्तवेति व्यवस्थापयेदिति यावत् ।

शङ्खः—"यद्येकपुत्रः स्यात्तदा द्वौ भागौ वाऽऽत्मनः कुर्यात्" ।

नन्विच्छयेति न वक्तव्यम्, विभागकर्तृत्वादेव तत्प्राप्तेः । न ह्यचेतनोऽनिच्छन्क्रियासु स्वतन्त्रो भवति, स्वतन्त्र एव कर्तोच्यते । सत्यम् । विभागकर्तृत्वादेव विभागविषयेच्छा प्राप्ता । अत एवासाविच्छया विभजेदित्यनेन [न] विधीयते किं त्वन्येव । तस्याश्च कस्यचित्पुत्रस्य न्यूनो धनांशः कस्यचिदधिक इत्येवं विषमो भागो विषयः । ततश्चेच्छया न्यूनाधिकविभागैः सुतान्विभजेदित्यर्थः । यद्यपि विभजेदित्यस्मात्विभाग एव प्रतीयते, न वैषम्यविशिष्टस्तथाऽपि—

"ज्येष्ठस्य विंश उद्धारः सर्वद्रव्याच्च यद्वरम् ।
ततोऽर्धं मध्यमस्य स्यात्तुरीयं तु यवीयसः" ॥

इत्यादिभिरुद्धारशास्त्रैर्यावन्त उद्धारप्रकारा विहितास्ते सर्वेऽनेनोपलक्षिता भवन्ति । ततश्च पारिशेष्याद्विभागकर्तुरिच्छया विभागवैषम्यम् "इच्छया विभजेत्सुतान्" इत्यत्र विधीयत इति सिद्धम् । अत्र नारदः—

"पित्रैव तु विभक्ता ये समन्यूनाधिकैर्धनैः ।
तेषां स एव धर्मः स्यात्सर्वस्य हि पिता प्रभुः" इति ॥

न चैतदुद्धारवाक्यार्थविषयमिति वाच्यं, पिता प्रभुरिति वचनात् । न ह्युद्धारे पितुः प्रभुत्वं किं तु शास्त्रस्य । बृहस्पतिः—

"समन्यूनाधिका भागाः पित्रा येषां प्रकल्पिताः ।
तथैव ते पालनीया विनयास्ते स्युरन्यथा" ॥

अथ चेच्छया विभजेत्सुतानित्यनेन विभागकर्तृतयैव पितुरिच्छया विभागप्रयोजकत्वं प्राप्तमुच्यत इति वाक्यार्थानर्थक्यप्रसङ्गपरिहारार्थं पुत्रेच्छा विभागं न प्रयुङ्क्त इति परिसंख्यायत इत्याश्रीयते। तथा च मनुः—

"ऊर्ध्वं पितुश्च मातुश्च समेत्य भ्रातरः समम् ।
भजेरन्पैतृकं रिक्थमनीशास्ते हि जीवतोः" ॥

देवलः—"पितर्युपरते पुत्रा विभजेरन्पितुर्धनम् ।
अस्वाम्यं हि भवेदेषां निर्दोषे पितरि स्थिते" ॥

अस्वाम्यमस्वातन्त्र्यम् ।

शङ्खलिखितौ—"अत ऊर्ध्वं रिक्थविभागः । न जीवति पितरि पुत्रा रिक्थं विभजेरन् । यद्यपि स्यात्पश्चादधिगतमेतेरनर्हा एव पुत्रा अर्थधर्मयोरस्वातन्त्र्यात्" ।

नारदः—"विभागोऽर्थस्य पित्र्यस्य पुत्रैर्यत्र प्रकल्प्यते ।
दायभाग इति प्रोक्तं तद्विवादपदं बुधैः" ॥

अत्र च पित्र्यस्य पुत्रैरिति च प्रदर्शनार्थम् । "विभागं चेत्पिता कुर्यात्" इति पितुः स्वार्जितधनविषयम् । तत्पितामहार्जितधनविषये तु सममेव पितापुत्रयोर्विभाग कर्तव्यम् । अत एवाऽऽह विष्णुः—

"पिता चेत्पुत्रान्विभजेत्तस्य स्वेच्छा स्वयमुपार्जितेऽर्थे पितृर्जितेऽपि धने कदाचित्पुत्रा एव विभागकर्तारो भवन्ति ।

अत एव नारदः—"अत ऊर्ध्वं पितुः पुत्रा विभजेरन्धनं समम्" ।
सममिति पित्रोरूर्ध्वं विभागकर्तृत्वं पुत्राणां प्रतिपाद्य—

"मातुर्निवृत्ते रजसि प्रत्तासु भगिनीषु च ।
निवृत्ते चापि रमणे पितर्युपरतस्पृहे" इत्युक्तवान् ।

पुत्राः समं धनं विभजेयुरित्यनुषज्यते ।

शङ्खः—"अकामे पितरि रिक्थविभागो वृद्धे विपरीतचेतसि दीर्घरोगिणि वा" ।

नारदः—"व्याधितः कुपितश्चैव विषयासक्तमानसः ।
अन्यथाशास्त्रकारी च न विभागे पिता प्रभुः" ॥

अन्यथाशास्त्रकारी विधिनिषेधातिक्रमकारी । पितृर्जितेऽपि धने पुत्राणां विभागे

स्वातन्त्र्यं पितुरकामत्वादौ निमित्ते भवति। मातरि त्वम्रियमाणायामस्वतन्त्रा एव पुत्राः। यदाह शङ्खः—

"ज्येष्ठ एव पितृवदर्थान्पालयेदितरेषां तु रिक्थमूलमेव
कुटुम्बमस्वतन्त्राः पितृमन्ती मातर्येवमवस्थितायाम्"।

मातुः कुटुम्बभरणसामर्थ्ये सत्येतत्। ज्येष्ठस्य यदनुजैः सहाविभक्तधनत्वमुच्यते, तत्तेषां मध्ये केष्विदध्येतव्ये वेदे सति द्रष्टव्यम्। अधीतवेदेष्वधिगतवेदार्थेषु चाग्निहोत्राद्यनुष्ठानसमर्थेषु च विभाग एव श्रेयान्। यदाह मनुः—

"एवं सह वसेयुर्वा पृथग्वा धर्मकाङ्क्षया।
पृथग्विवर्धते धर्मस्तस्माद्धर्म्याः पृथक्क्रियाः"॥

व्यासः—"भ्रातृणां जीवतोः पित्रोः सहवासो विधीयते।
तदभावे विभक्तानां धर्मस्तेषां विवर्द्धते"॥

यदा त्वप्रगल्भतया ज्येष्ठेन सह विभक्तधनाः कनीयांसो न भवन्ति, तदा तेषामावश्यकं वैश्वदेवाद्यपि न विभज्यते। यदाह बृहस्पतिः—

"एकपाकेन वसतां पितृदेवद्विजार्चनम्।
एकं भवेद्विभक्तानां तदेव स्याद्गृहे गृहे"॥

उक्ते पितृकर्तृके विभागे पुत्राणां विषमोऽपि विभागो भवतीति तस्य विशेषापवादमाह मनुः—

"भ्रातृणामविभक्तानां यद्युत्थानं भवेत्सह।
न तत्र भागं विषमं पिता दद्यात्कथंचन"॥ ११४॥

किंच—

यदि कुर्यात्समानंशान्पत्न्यः कार्याः समांशिकाः।
न दत्तं स्त्रीधनं यासां भर्त्रा वा श्वशुरेण वा॥ ११५॥

यदि पिता पुत्राणां कृते समं धनविभागं कुर्यात्तदा याभ्यः स्त्रीभ्यः स्त्रीधनं भर्त्रा वा श्वशुरेण पित्रा वा न दत्तं ताः स्वपत्न्यः पुत्रसमांशाः कार्याः। एकस्य पुत्रस्य यावानंशस्तावदंशमेकैकां पत्नीं कुर्यादित्यर्थः॥ ११५॥

विभागवैषम्ये कारणान्तरमाह—

शक्तस्यानीहमानस्य किंचिद्दत्त्वा पृथक्क्रिया॥

यः पुत्रो धनार्जनसमर्थतया पितृधनं नेच्छति, यो वा धनार्जनसमर्थोऽपि अलसतया धनार्जनरक्षणानुकूलां चेष्टां न कुरुते, तस्मै किंचिदसारमल्पकं धनं

दत्त्वा पित्रा पृथक्क्रिया कार्या। अन्यथा तेन तत्संतत्या वा विवादः स्यात्। पुत्रैः संभूयार्जिते धन एतत्। पित्रादिधने तु सममंशं लभत एव।

मनुः—"भ्रातॄणां यस्तु नेहेत धनं शक्तः स्वकर्मणा।
स विभाज्यः स्वकादंशात्किंचिद्दत्त्वोपजीवनम्"॥

स्वकादंशाद्भ्रातृभिः स्वयमर्जितादित्यर्थः।

प्रसङ्गादन्यदुच्यते। अत्र नारदः—

"कुटुम्बार्थेषु चोद्युक्तस्तत्कार्यं कुरुते च यः।
स भ्रातृभिर्बृंहणीयो ग्रासाच्छादनवाहनैः"॥

आपस्तम्बः—सर्वे हि धर्मसंयुक्ता भागिनो यस्त्वधर्मेण द्रव्याणि प्रतिपा-
दयति ज्येष्ठोऽपि तमभागं कुर्वीत"।

अधर्मेण द्यूतादिना द्रव्याणि सुवर्णगोवस्त्रादीनि प्रतिपादयति विनाशयति अन्यत्र नयति वा।

गौतमः—"सवर्णापुत्रोऽप्यन्यायवृत्तो न लभेतैकेषाम्"।

मनुः—"सर्व एव विकर्मस्था नार्हन्ति भ्रातरो धनम्"।

शङ्खलिखितौ—"अपपात्रितस्य रिक्थपिण्डोदकानि निवर्तन्ते"।

पतितत्वाज्ज्ञातिभिर्बहिष्कृतोऽपपात्रितः। रिक्थं पितृधनम्। पुत्रस्थानीयस्य ज्ञातिधनमपि।

उक्तो विषमविभागः स धर्मत्वादनतिक्रमणीय इत्याह—

न्यूनाधिकविभक्तानां धर्मः पितृकृतः स्मृतः॥ ११६॥

पुत्रैर्वाऽर्जितधनस्य न्यूनाधिकांशदानेन पुत्राणां विभक्तधनानां स एव धर्मो यः पित्रा कृतोऽतोऽसौ नातिक्रमणीयः।

बृहस्पतिः—"समन्यूनाधिका भागाः पित्रा येषां प्रकल्पिताः।
तथैव ते पालनीया विनेयास्ते स्युरन्यथा"॥ ११६॥

अधुना कर्तृकर्मकालप्रकारैर्विशिष्टं विभागान्तरमाह—

विभजेरन्सुताः पित्रोरूर्ध्वं रिक्थमृणं समम्।
मातुर्दुहितरः शेषमृणात्ताभ्य ऋतेऽन्वयः॥ ११७॥

मातापित्रोर्मरणादूर्ध्वं तयोरेव रिक्थमृणं च पुत्राः समं यावन्तो भ्रातरस्तावतो भागान्प्रत्येकमन्यूनाधिकानृणस्य धनस्य च कृत्वा भजेरन्। ततश्च यो यावन्तं धनस्य विभागं भजते तावन्तमृणस्यापि भजते। एवं च सति यच्चतुस्त्रिद्व्येकभागाः स्युरिति तथा येन येषां स्वयमुत्पादितं स्यादित्यादिषु विषमविभागविधिष्वृणस्यापि

धनानुसारेण विभागविधिरवसेयः। मातुस्तु धनमृणापाकरणे कृते यदवशिष्टं तत्तस्या दुहितरो विभजेरंस्तास्य कृते दुहितृणामभावे तदन्वयो दुहित्रन्वयः। दुहितॄणां तदन्वयस्य वाऽभावे पुत्रा एव मातृधनं विभजेरन्। यदाह कात्यायनः—

"दुहितॄणामभावे तु रिक्थं पुत्रेषु तद्भवेत्।
बन्धुदत्तं तु बन्धूनामभावे भर्तृगामि तत्॥
भगिन्यो बान्धवैः सार्धं विभजेरन्सभर्तृकाः।
स्त्रीधनस्येति धर्मोऽयं विभागस्तु प्रकल्पितः" इति।

मनुः—"जनन्यां संस्थितायां तु समं सर्वे सहोदराः।
भजेरन्मातृकं रिक्थं भगिन्यश्च सनाभयः" इति।

अत्र चशब्दो विकल्पार्थो न समुच्चयार्थः। विकल्पे च दुहितरः कुमार्यः पूर्वमधिक्रियन्ते। यदाह मनुरेव—

"मातुस्तु यौतकं यत्स्यात्कुमारीभाग एव सः" इति।

गौतमस्तु प्रत्तानामपि दुहितॄणामप्रतिष्ठितानां मातृधनग्राहित्वमाह—

"स्त्रीधनं दुहितॄणामप्रत्तानामप्रतिष्ठितानां च" इति।

अप्रतिष्ठिताऽनपत्या निर्धना दुर्भगा वा।

बृहस्पतिः—"स्त्रीधनं स्यादपत्यानां दुहिता च तदंशिनी।
अप्रत्ता चेत्समूढा तु लभते मानमात्रकम्"॥

यौतकं पृथग्धनम्। मानमात्रकं स्वल्पमित्यर्थः।

वसिष्ठः—"मातुः पारीणाह्यं स्त्रियो विभजेरन्"।

पारीणाह्यमलंकारादि। अनपत्यस्त्रीधनविषये मनुराह—

"स्त्रियास्तु यद्भवेद्वित्तं पित्रा दत्तं कथंचन।
ब्राह्मणी तद्धरेत्कन्या तदपत्यस्य वा भवेत्"॥

पित्रेत्युपलक्षणम्। कन्या सापत्नी, ब्राह्मणीति विशेषणोपरोधात्। एवं च सति प्रत्तासु प्रतिष्ठितासु दुहितृषु पुत्राणामपि मातृधनेऽधिकारो भवति।

अस्मिन्नेव विषये विशेषान्तरमाह मनुः—

"यास्तासां स्युर्दुहितरस्तासामपि यथार्हतः।
मातामह्या धनात्किंचित्प्रदेयं प्रीतिपूर्वकम्"॥

विभजेरन्सुताः पित्रोरूर्ध्वमित्यस्यायमर्थः—यदि पित्रोर्मरणादूर्ध्वं विभजेरंस्तदा रिक्थादि समं विभजेरन्निति। एतद्भ्रातृकर्तृकविभागपरं, तेन जीवत्यपि पितरि

भ्रातरः सममेव विभजेरन्। पितुस्तु विभजमानस्य नायं नियम इत्यर्थादुच्यते। न च पितोरूर्ध्वं विभजेरन्नेवेति व्याख्येयम्। यदाह मनुः—

"एवं सह वसेयुर्वा पृथग्वा धर्मकाम्यया।
पृथग्विवर्धते धर्मस्तस्माद्धर्म्या पृथक्क्रिया" ॥

यत्तु तेनैवोक्तम्—"ज्येष्ठ एव तु गृह्णीयात्पित्र्यं धनमशेषतः।
शेषास्तमुपजीवेयुर्यथैव पितरं तथा" ॥

इति, तदसमाप्तवेदाध्ययनेषु कनिष्ठेषून्मत्तत्वादिना निरंशेष्वप्राप्तव्यवहारेषु वा वेदितव्यम्। अत्र कात्यायनः—

"अप्राप्तव्यवहाराणां विभागश्च विधीयते।
पुंसां च षोडशे वर्षे जायते व्यवहारिता" ॥

अप्राप्तव्यवहारत्वं च प्रदर्शनार्थम्। अगृहीतवेदत्वमपि ह्यविभागकारणम्। यदाह हारीतः—

"यद्यसमाप्तवेदाः कनीयांसस्तदा सह वसेयुः" इति।

नारदः—"विभजयादिच्छतः सर्वाञ्ज्येष्ठो भ्राता यथा पिता।
भ्राता शक्तः कनिष्ठो वा शक्त्यपेक्षा कुले स्थितिः" ॥

नारदस्तु पैतृकमृणमपाकृत्यैव रिक्थं विभजनीयमिति स एवाऽऽह—

"यच्छिष्टं पितृदायेभ्यो दत्त्वर्णं पैतृकं च यत्।
भ्रातृभिस्तद्विभक्तव्यमृणी स्यादन्यथा पिता" ॥

पितृदायो नवश्राद्धानि। तथाऽऽह गौतमः—"नवश्राद्धं सह दद्युः"।

कात्यायनः—"भ्रात्रा पितृव्यमातृभ्यां कुटुम्बार्थमृणं कृतम्।
विभागकाले देयं तद्रिक्थिभिः सर्वमेव तु ॥
तदृणं धनिने देयं नान्यथैव प्रदापयेत्।
भावितं चेत्प्रमाणेन विरोधात्परतो यदा" ॥

विरोधाद्विवादात्परत ऊर्ध्वम्।

तथा—"पित्र्यं पित्रार्थसंयुक्तमात्मीयं चाऽऽत्मना कृतम्।
ऋणमेवंविधं शोध्यं विभागे बन्धुभिः सह ॥
धर्मार्थं प्रीतिदत्तं च यदृणं स्वनियोजितम्।
तद्दृश्यमानं विभजेन्न दाऽं पैतृकाहतात्" ॥

अस्यार्थः—धर्मार्थं यत्संकल्पितं यच्च प्रीतेन वाचा दत्तं च यदृणं, तदा स्वपुत्रे त्वयेतदपाकरणीयमृणमिति पित्रा नियोजितं, तद्दृश्यमानमुपलभ्यमानं विभजेत्, न तु पैतृकादृणाद्दपाकृत्य धनविभागः कार्य इति।

"दृश्यमानं विभाज्यं तु गृहक्षेत्रं चतुष्पदम् ।
गूढद्रव्याभियुक्तानां प्रत्ययस्तत्र कीर्तितः ॥
गृहोपस्करवाह्याश्च दोह्याभरणकर्मिणः ।
दृश्यमानं विभाज्यं तु कोशं गूढेऽब्रवीद्भृगुः" ॥

प्रत्ययो दिव्यम् । कोशग्रहणं दिव्यमात्रोपलक्षणार्थम् ।

मनुः—"अजाविकं सैकशफं न जातु विषमं भजेत् ।
अजाविकं तु विषमं ज्येष्ठस्यैव विधीयते" ॥

विषमं भ्रातृसंख्यापेक्षयाऽन्यसंख्यम् ॥ ११७ ॥

अविभाज्यमाह—

पितृद्रव्याविरोधेन यदन्यत्स्वयमर्जितम् ॥
मैत्रमौद्वाहिकं चैव दायादानां न तद्भवेत् ॥ ११८ ॥

अविभक्तधनानां मध्ये येन पितृधनस्याविरोधेनानुपघातेनानुपजीवनेन स्वयमेकाकिनेव यदन्यदधिकं धनमर्जितं, यच्च मैत्रं मित्रादवाप्तं, यच्चौद्वाहिकमुद्वाहे श्वशुरादिभ्यो लब्धं, न तद्दायादसंबन्धि भवेत् । न तद्विभजनीयम् । किं तूपार्जकस्यैव तदित्यर्थः ।

मनुः—"अनुपघ्नन्पितृद्रव्यं श्रमेण यदुपार्जयेत् ।
स्वयमीहितलब्धं च नाकामो दातुमर्हति" ॥

श्रमो युद्धकृष्यादिः । ईहाऽत्र श्रमरहिता चेष्टा ।

कात्यायनः—"यल्लब्धं लाभकाले तु सजात्या कन्यया सह ।
कन्यागतं तु तद्वित्तं शुद्धं वृद्धिकरं स्मृतम् ॥
वैवाहिकं तु तद्विद्याद्भार्यया यत्सहाऽऽगतम् ।
धनमेवंविधं सर्वं विज्ञेयं धर्मसाधकम्" ॥ ११८ ॥

तथा—

क्रमादभ्यागतं द्रव्यं हृतमभ्युद्धरेत्तु यः ॥
दायादेभ्यो न तद्दद्याद्विद्यया लब्धमेव च ॥ ११९ ॥

यत्पूर्वपुरुषक्रमायातं क्षेत्रारामादिकं द्रव्यं कथमपि परैरपहृतं यो दायादानुमत्याऽभ्युद्धरेत्तदसौ दायादेभ्यो न दद्यात् । यत्पुनर्दायादानुमतिमन्तरेणोद्धृतं तच्चतुर्थांशमुद्धर्ता गृह्णीयात् । शेषमुद्धारकेण सह सर्वे विभजेरन् । यदाह शङ्खः—

पूर्वनष्टां तु यो भूमिमेकश्चाप्युद्धरेत्क्रमात् ।
यथांशं तु लभन्तेऽन्ये दत्तांऽशंतु तुरीयकम् " ॥

यत्र विद्यया निमित्तभूतया लब्धं तदपि दायादेभ्यो न दद्यात् ।

मनुः—"विद्याधनं तु यद्यस्य तत्तस्यैव धनं भवेत् ।
मैत्रमौद्वाहिकं चैव माधुपर्किकमेव च " ॥

कात्यायनः—"परभक्तोपयोगेन विद्या प्राप्ताऽन्यतस्तु या ।
तया प्राप्त धनं यत्तु विद्याप्राप्तं तदुच्यते " ॥

भक्तमन्नम् । अन्यतः पितुरन्यत इत्यर्थः ।

"उपन्यस्ते न लब्धं यद्विद्यया पणपूर्वकम् ।
विद्याधनं तु तद्विद्याद्विभागे न नियुज्यते ॥
शिष्यादार्त्विज्यतः प्रश्नात्संदिग्धप्रश्ननिर्णयात् ।
स्वज्ञानशंसनाद्वादाल्लब्धं प्राध्ययनाच्च यत् ॥
विद्याधनं तु तत्प्राहुर्विभागे न विभज्यते ।
शिल्पेष्वपि हि धर्मोऽयं मूल्याद्यच्चाधिकं भवेत् ॥
विद्यापणकृताविव याज्यतः शिष्यतस्तथा ।
एतद्विद्याधनं प्राहुः सामान्यं यदतोऽन्यथा ॥
परं निरस्य यल्लब्धं विद्यातो द्यूतपूर्वकम् ।
विद्याधनं तु तद्विद्यान्न विभाज्यं बृहस्पतिः ॥
विद्याप्रतिज्ञया लब्धं शिष्यादाप्तं च यद्भवेत् ।
ऋत्विङ्न्यायेन यल्लब्धमेतद्विद्याधनं भृगुः ॥
आरुह्य संशयं यत्र प्रसभं कर्म कुर्वते ।
तस्मिन्कर्मणि तुष्टेन प्रसादः स्वामिना कृतः ॥
तत्र लब्धं तु यत्किंचिद्धनं शौर्येण यद्भवेत् " ।

व्यासः—"विद्याप्राप्तं शौर्यधनं यच्च सौदायिकं भवेत् ।
विभागकाले तत्तस्य नान्वेष्टव्यं स्वरिक्थिभिः " ॥

कात्यायनः—"ध्वजाहृतं भवेद्यत्तु विभाज्यं नैव तद्भवेत् ।
संग्रामादाहृतं यत्तु विद्राव्य द्विषतां बलम् ॥
स्वाम्यर्थे जीवितं त्यक्त्वा तद्ध्वजाहृतमुच्यते " ।

मध्यादीनां धनानां पितृद्रव्यानुपयोगेनार्जितानां न विभागः । तदुपयोगार्जितविषये तु व्यास आह—

"साधारणं समाश्रित्य यत्किंचिद्वाहनायुधम्।
शौर्यादिनाऽऽप्नोति धनं भ्रातरस्तत्र भागिनः॥
तस्य भागद्वयं देयं शेषास्तु समभागिनः"।

कात्यायनः—"नाविद्यानां तु वैद्येन देयं विद्याधनं क्वचित्।
समविद्याधिकानां तु देयं वैद्येन तद्धनम्"

नारदः—"वैद्यो वैद्याय नाकामो दद्यादंशं स्वतो धनात्।
पित्र्यं द्रव्यं समाश्रित्य न चेत्तेन तदाहृतम्॥
कुटुम्बं बिभृयाद्भ्रातुर्यो विद्यामधिगच्छतः।
भागं विद्याधनात्तस्मात्स लभेताश्रुतोऽपि सन्॥
यत्किंचित्पितरि प्रेते धनं ज्येष्ठोऽधिगच्छति।
भागो यवीयसां तत्र यदि विद्यानुपालिनः"॥

विद्यानुपालिनो विद्याभ्यासवन्तः कनीयांसः। अपरमप्यविभाज्यमाह

मनुः—"वस्त्रं पत्रमलंकारं कृतान्नमुदकं स्त्रियः।
योगक्षेमं प्रचारं च विभाज्यं न प्रचक्षते"॥

अत्र पत्रशब्देन यानमुच्यत इति केषांचिद्व्याख्यानं तत्कात्यायनवचनविरुद्धम्। यथा हि—

"धनं पत्रनिविष्टं तु धर्मार्थं च निरूपितम्।
उदकं चैव दाराश्च निबन्धो यः क्रमागतः॥
धृतं वस्त्रमलंकारो नानुरूपं तु यद्भवेत्।
यथा कालोपयोग्यानि तथा योज्यानि बन्धुभिः॥
गोप्रचारश्च रथ्या च वस्त्रं यच्चाङ्गयोजितम्।
प्रयोज्यं न विभज्येत धर्मार्थं च बृहस्पतिः"॥

नानुरूपं विभागाननुरूपं विभक्तृभिः सह विषमसंख्याकं तद्यथाकालं विभक्तसंख्यानुरूपेण कालोपयुक्तं कार्यम्। यच्च वस्त्रादीनामविभाज्यत्वमुक्तं तत्स्वरूपतः, मूल्यतस्तु विभजनीयमेव। यदाह बृहस्पतिः—

"वस्त्रादयोऽविभाज्या यैरुक्तं तैर्न विचारितम्।
धनं भवेत्समृद्धानां वस्त्रालंकारसंश्रितम्॥
मध्यस्थितमनाजीव्यं दातुं नैकस्य शक्यते।
युक्त्या विभजनीयं तदन्यथाऽनर्थकं भवेत्॥
विक्रीय वस्त्राभरणं धनमुद्ग्राह्य लेखितम्।

कृतान्नं चाकृतान्नेन परिवर्त्य विभज्यते ॥
उद्धृत्य कूपवाप्यम्भस्त्वनुसारेण गृह्यते ।
तथा भागानुसारेण सेतुः क्षेत्रं विभज्यते ॥
एकां स्त्रीं कारयेत्कर्म यथांशेन गृहे गृहे ।
बह्वाः समांशतो देया दासानामप्ययं विधिः ॥
योगक्षेमवतो लाभः समत्वेन विभज्यते ।
प्रचारश्च यथांशेन कर्तव्यो रिक्थिभिः सदा ''

एकां स्त्रीमित्यनुपभुक्तदासीविषयम । उपभुक्तायां गौतम आह—

"उदकयोगक्षेमकृतान्नेष्वविभागः स्त्रीषु च संयुक्तासु " इति ।

योगक्षेमवतो लाभमिति योगक्षेमवान्राजादिरीश्वरो यः पित्रादिभिः स्वकुटुम्ब-निर्वाहकत्वेनोपार्जितस्ततो यो लाभो लब्धं धनं तत्सम विभाज्यमित्यर्थः । प्रचारः प्रवेशनिर्गमभूः ।

शङ्खलिखितौ—"न चास्ति विभागोऽन्नोदपात्रालंकारसंयुक्तस्त्रीवाससमुपचाराणां विभागश्चेति प्रजापतिः " ॥ ११९ ॥

सामान्यार्थसमुत्थाने विभागस्तु समः स्मृतः ॥
अनेकपितृकाणां तु पितृतो भागकल्पना ॥ १२० ॥

अर्थसमुत्थानमर्थार्जनम् । सर्वेषां परस्परसापेक्षाणामर्थार्जने सति समो विभागः कार्यः । एतस्मिन्विषये पिताऽपि सममेव विभजेत् । तदाह मनुः—

"भ्रातृणामविभक्तानां यद्युत्थानं भवेत्सह ।
न तत्र भागं विषमं पिता दद्यात्कथंचन " ॥

एवं च सति विषयान्तरे पितृकर्तृको विभागो विषमोऽपि स्यादिति गम्यते ।

तथा—"अविद्यानां तु सर्वेषामीहातश्चेद्धनं भवेत् ।
समस्तत्र विभागः स्यादपित्र्य इति धारणा " ॥

अविभक्तधना एव ये भ्रातरः परेतास्तेषां कस्यचिदेकः कस्यचिद्द्वौ कस्यचिद्बहवः पुत्राः स्युः । तत्र तेषां पितृतो भागकल्पना, पितुरेव यावान्भागस्तावन्तमेव द्वौ वा बहवो वा गृह्णीयुर्न तेषां समो विभाग इत्यर्थः ।

बृहस्पतिः—"समवेतैस्तु यत्प्राप्तं सर्वे तत्र समांशिनः ।
तत्पुत्रा विषमसमाः पितृभागहराः स्मृताः ॥

कात्यायनः—"अविभक्ते मृते पुत्रे तत्सुतं रिक्थभागिनम् ।

कुर्वीत जीवनं येन न लब्धं वै पितामहात् ॥
लभतेंऽशं हि पित्र्यं तु पितृव्यात्तस्य वा सुतात् ।
स एवांशस्तु सर्वेषां भ्रातॄणां न्यायतो भवेत् ॥
लभते तत्सुतो वाऽपि निवृत्तिः परतो भवेत्' ।

अविभक्तधने भ्रातरि मृते तत्पुत्रः पितामहादनवाप्तविभागः पितृव्यात्तत्पुत्राद्वा निजपितृभागं गृह्णीयात् । एवं च तत्पुत्रस्तत्पौत्रस्तु न लभेतेत्यर्थः । अत्र देवलोक्तो विशेषः—

"अविभक्तविभक्तानां कुल्यानां वसतां सह ।
भूयो दायविभागः स्यादाचतुर्थादिति स्थितिः ॥
तावत्कुल्याः सपिण्डाः स्युः पिण्डभेदस्ततः परम् ।
समभिच्छन्ति पिण्डानां दायार्थस्य विभाजनम् ॥
विधिरेष सवर्णानां बहूनां समुदाहृतः ॥
एक एव सवर्णः स्याद्दायोऽत्र न विभज्यते ॥

विष्णुः—"अथ भ्रातॄणां दायविभागो याश्चानपत्याः स्त्रियः स्युस्तासां
चाऽऽ पुत्रलाभाद्विभागो भ्रातॄणां स्त्रियो भार्याः" ।

अनुत्पन्नापत्या गृहीतगर्भा मृतभर्तृकास्तासामपि दायो देय आ पुत्रलाभात् । पुत्रोत्पत्तौ तु भागो व्यावर्तते । आ पुत्रलाभादिति वचनात् ॥ १२० ॥

यदुक्तम्—"विभागं चेत्पिता कुर्यादिच्छया विभजेत्सुतान्" इति तस्यापवादमाह—

भूर्या पितामहोपात्ता निबन्धो द्रव्यमेव वा ॥
तत्र स्यात्सदृशं स्वाम्यं पितुः पुत्रस्य चोभयोः ॥ १२१ ॥

पितामहधने पौत्रस्य स्वपित्रा तुल्यं स्वाम्यं, तेन विभागमनिच्छन्नपि पिता स्वपितृधनं पुत्रविभागेच्छया विभजेत् । समश्च विभागो न स्वार्जितधनवद्विषमः कार्यः । निबन्धो मासाब्दिकभागो प्रतिचेत्रं प्रतिगृहं चैतावद्धनममुष्मै देयमिति ।

कात्यायनः—"पैतामहं समानं स्यात्पितुः पुत्रस्य चोभयोः ।
स्वयं तूपार्जिते पिता न पुत्रः स्वाम्यमर्हति" ॥

एतत्पितामहधनानुपजीवनेन पितर्युपार्जिते द्रष्टव्यम् ।

व्यासः—"क्रमागते गृहे चैव पितृपुत्राः समांशिनः ।
पैतृके नविभागार्हाः पुत्राः पितुरनिच्छतः" ॥

बृहस्पतिः—"द्रव्ये पितामहोपात्ते स्थावरे जङ्गमेऽपि वा ।

ममसंभिलमाख्यातं पितुः पुत्रस्य चैव हि ॥

पैतामहं हृतं पित्रा स्वशक्त्या यदुपार्जितम् ।

विद्याशौर्यादिनाऽवाप्तं तत्र स्वाम्यं पितुः स्मृतम् " ॥

यत्पैतामहं धनं परैरपहृतं पिता पुनः स्वसामर्थ्येनोपार्जितं, विद्यादिना च तेनैव यदवाप्तं, तत्र पितुरेव स्वाम्यं न पुत्राणाम् । अत एवाऽऽह—

"प्रदानं स्वेच्छया कुर्याद्भोगं चैव ततो धनात् ।

तदभावे तु तनयाः समांशाः परिकीर्तिताः " ॥

कात्यायन —"स्वशक्त्याऽपहृतं नष्टं स्वयमाप्तं च यद्भवेत् ।

एतत्सर्वं पिता पुत्रैर्विभागे नैव दाप्यते " ॥

यदपहृतं नष्टं च पिता स्वशक्त्याऽर्जयेत् । एतद्विभागकाले पिता पुत्रैर्न दाप्यत इत्यर्थः । एवं तावत्पैतामहे धने पौत्रस्य स्वपित्रा सह सदृशं स्वाम्यं स्मृतयो वदन्ति । न चैतावता "अग्नीनादधीत" इत्यादिश्रुतिविरुध्यते, येन तद्विरोध-परिहाराय सति पुत्रे पिता स्वपितृधनं न सर्वं दद्याद्भुञ्जीत वा किं तु पुत्रार्थमवशेष-येदित्यौपचारिकार्थपरतया व्याख्यायेरन् । न हि जातपुत्रस्य धने स्वाम्यमपैति, येन स्वधनसाध्यार्थाः श्रुतयो विरुध्येरन् । यद्यपि तद्धनं स्वस्य पुत्रस्य च साधारणं तथाऽपि पुत्रानुमत्या पुत्रविभागपृथक्करणेन द्रव्यान्तरार्जनेन वा शक्यत एवाग्निहोत्रादि कर्तुम् । न च संविभागात्स्वाम्योत्पत्तिर्येन प्राग्विभागात्पिता न स्वामी स्यात् । संविभागो हि साधारणधनानां स्वामिनामेकैकत्र भागे स्वामिन एकैकस्य स्वाम्यं व्यवस्थापयति, नापूर्वमुत्पादयति । यथा लोके संभूय समुत्थायिनां वेदे च सत्त्रिणां स्वाम्यं त्याने । यदि च विभागः स्वामित्वे हेतुस्तदा हठादिना क्रियमाणोऽपि तज्जनयेत् । यदपि गौतमेनोक्तम्—

"स्वामी रिक्थक्रयसंविभागपरिग्रहाधिगमेषु"

इति, तत्संविभागस्य व्यवस्थितस्य स्वामिभावजनकत्वपरम् ॥ १२१ ॥

विभक्तेषु सुतो जातः सवर्णायां विभागभाक् ।

दृश्याद्वा तद्विभागः स्यादायव्ययविशोधितात् ॥ १२२ ॥

विभक्तधनेषु पुत्रेषु यः सवर्णायां पुत्रो जातः स पितृविभागभाग्भवति, पितृ-विभागाभावे तु यदि विभक्तं क्षेत्रादिकं कृते विभागे पश्चाद्दृश्यते तदुत्पन्नाद्विशोधिता-यव्ययाद्विभागः कार्यः । मनुः—

"ऊर्ध्वं विभागाज्जातस्तु पित्र्यमेव हरेद्धनम् ।

संसृष्टास्तेन वा ये स्युर्विभजेत स तैः सह " ॥

विभक्तेषु जातः पितृधनमेव हरेन्न भ्रातृधनं पितुर्मातृणां चाभावे पित्रा सह ये संसृष्टास्तैः सह पितृभागं विभजेत। जात इत्येकवचनमविवक्षितम्। यदाह बृहस्पतिः—

"पित्रा सह विभक्ता ये सापत्ना वा सहोदराः।
जघन्याश्चैव ये तेषां पितृभागहरास्तु ते"॥

तत्र यदि पूर्वं विभक्तानां महान्भागो जघन्यानां तु पितृभागमेव विभज्य गृह्णतामन्यथाऽपि पूर्वविभक्तभ्रातृभागान्न तैर्ग्राह्यमिति स एवाऽऽह—

"अनीशः पूर्वजः पित्रे भ्रातृभागे विभक्तजः।
पुत्रैः सह विभक्तेन पित्रा यत्स्वयमर्जितम्॥
विभक्तजस्य तत्सर्वमनीशाः पूर्वजाः स्मृताः"।

यदा तु न विभक्तजः कुतश्चित्पूर्वोक्तेन प्रकारेणाल्पमपि विभागं लभते, तदा भ्रातृभागेभ्यो गृह्णीयादित्यर्थः।

विष्णुः—"पितृविभक्तविभागानन्तरोत्पन्नस्य विभागं दद्युः"॥ १२२॥

प्रकारान्तरेणाविभाज्यविशेषमाह—

पितृभ्यां यस्य यद्दत्तं तत्तस्यैव धनं भवेत्॥

प्राक्पश्चाद्वा विभागान्माता पित्रा वा यस्मै पुत्राय यत्पारितोषिकं दत्तं तत्तस्यैव, न पुत्रान्तरैर्विभाज्यमित्यर्थः। नारदः—

"शौर्यभार्याधने चोभे यच्च विद्याधनं भवेत्।
त्रीण्येतान्यविभाज्यानि प्रसादो यश्च पैतृकः॥
माता च स्वधनं दत्तं यस्मै स्यात्प्रीतिपूर्वकम्।
तस्याप्येष विधिर्दृष्टो माताऽपीष्टे यथा पिता"॥

व्यासः—"पितामहेन यद्दत्तं पित्रा वा प्रीतिपूर्वकम्।
तस्य तन्नापहर्तव्यं माता दत्तं च यद्भवेत्"॥

स्थावरे पर्युदासमाह नारदः—

"मणिमुक्ताप्रवालानां सर्वस्यैव पिता प्रभुः।
स्थावरस्य तु सर्वस्य न पिता न पितामहः॥
पितृप्रसादाद्भुज्यन्ते वस्त्राण्याभरणानि च।
स्थावरं तु न भुज्येत प्रसादे पैतृके सति"

किं तु—

पितुरूर्ध्वं विभजतां माताऽप्यंशं समं हरेत्॥ १२३॥

पितुर्मरणादूर्ध्वं रिक्थं विभजतां पुत्राणां विभागे समं भागं माताऽपि लभेत। बहुवचनमविवक्षितम्। तेनैकस्य सुतस्य यावान्भागस्तावानेव मातुर्भवतीत्यर्थः। मातृग्रहणं तत्सपत्न्यादिप्रदर्शनार्थम्।

व्यासः—"असुतास्तु पितुः पत्न्यः समानांशाः प्रकीर्तिताः।
पितामह्यश्च सर्वास्ता मातृतुल्याः प्रकीर्तिताः" ॥

अदत्तस्त्रीधनविषयमेतत् ॥ १२३ ॥

पुत्राणां विभजतां कार्यान्तरमाह—

असंस्कृताश्च संस्कार्या भ्रातृभिः पूर्वसंस्कृतैः ॥
भगिन्यश्च निजादंशाद्दत्त्वांऽशं तु तुरीयकम् ॥ १२४ ।

ये कनीयांसो भ्रातरः पित्रा जातकर्मादिना न संस्कृतास्ते ज्येष्ठैः संस्कृतैः संस्कार्याः। भगिन्यश्चाकृतविवाहसंस्कारा एकस्य पुत्रस्य यावान्निजोंऽशस्तस्माच्चतुर्थमंशं प्रत्येकं प्रदाय संस्कार्या विवाहयितव्याः। नारदः—

"येषां च न कृताः पित्रा संस्कारविधयः क्रमात्।
कर्तव्या भ्रातृभिस्तेषां पैतृकादेव ते धनात् ॥
अविद्यमाने पित्रंशे स्वांशादुद्धृत्य वा पुनः।
अवश्यकार्याः संस्कारा भ्रातृणां पूर्वसंस्कृतैः" ॥

व्यासः—"असंस्कृतास्तु ये तत्र पैतृकादेव ते धनात्।
संस्कार्या भ्रातृभिर्ज्येष्ठैः कन्यकाश्च यथाविधि" ॥

मनुः—"स्वेभ्योंऽशेभ्यस्तु कन्याभ्यः प्रदद्युर्भ्रातरः पृथक्।
स्वात्स्वादंशाच्चतुर्भागं पतिताः स्युरदित्सवः" ॥

अत्रापि स्वेभ्योंऽशेभ्य इति पदद्वयं पुत्रांशमात्रविवक्षया। बहुवचनं कन्याबहुत्वाभिप्रायम्। स्वात्स्वादिति वीप्साऽनेकजातीयकन्याभिप्राया। एतदुक्तं भवति—यदा ब्राह्मणस्य सवर्णा भार्या भवन्ति, तासां च प्रत्येकं कन्यकाः सन्ति, तत्र ब्राह्मणी या कन्यका सा ब्राह्मणस्य पुत्रस्य यावानंशो भवति ततश्चतुर्थांशं लभते। एवं ब्राह्मणस्यैव पितुः क्षत्रियादिकन्यकाः क्षत्रियादिसुतांशचतुर्थभागग्राहिण्य इति। न चार्थं दायः। ततश्चाईति स्त्रीत्यनुवृत्तौ यदुक्तं बौधायनेन—

"न दायं निरिन्द्रियाणां ता ह्यदायाः स्त्रियो मता इति श्रुतिः"

इति, तेन सहास्याविरोधः। इति सवर्णदायविभागविधिः ॥ १२४ ॥

असवर्णानां दायविभागमाह—* * * †

† Portions about rights of sons of wives of different castes are omitted.

तत्र यो मातापितृभ्यां पित्रैव वा माता वा भर्त्रनुमत्या यस्मै दत्तः स तस्य दत्तको नाम पुत्रो भवति। मनुः—

"माता पिता वा दद्यातां यमद्भिः पुत्रमापदि।
सदृशं प्रीतिसंयुक्तो स ज्ञेयो दत्रिमः सुतः" ॥

अद्भिरिति सकलदानधर्मोपलक्षणार्थम्। आपदि दुर्भिक्षादौ। अथ वा ग्रहीतुरापदि। सुताभावे सदृशं दातुर्ग्रहीतुश्च सवर्णम्। प्रीतिसंयुक्तो न भयादिसंयुक्तावित्यर्थः।

तथा—"गोत्ररिक्थे जनयितुर्न हरेद्दत्रिमः सुतः।
गोत्ररिक्थानुगः पिण्डो व्यपैति ददतः स्वधा" ॥

ततश्च दत्तकः पूर्वस्य पितुर्गोत्रं रिक्थं च न गृह्णीयात्। पिण्डं च तस्मै न दद्यात्। किं तु द्वितीयस्यैव पितुर्गोत्रादिग्राहकः पिण्डदश्च भवेत्। पिण्डशब्दोऽत्र सकलौर्ध्वदैहिकोपलक्षणार्थः। एवं कृत्रिमदत्तात्मापविद्धन्यायसाम्यात्स्वयं दशविधं पुत्रं निरूप्य तदवस्थां वर्णक्रमेणाऽऽह ब्रह्मपुराणे—

"दत्तकश्च स्वयंदत्तः कृत्रिमः क्रीत एव च।
अपविद्धश्च ये पुत्रा भरणीयाः सदैव हि ॥
भिन्नगोत्राः पृथक्पिण्डाः पृथग्वंशकरास्तथा।
सूतके मृतके चापि त्र्यहाशौचस्य भागिनः ॥
अथ वस्त्रान्नदातॄणां बीजक्षेत्रवतां तथा।
शूद्रो दासः पारशवो विप्राणां विद्यते क्वचित् ॥
राज्ञां तु शापदग्धानां नित्यं क्षयवतां तथा।
अथ संग्रामशीलानां न कदाचिद्भवन्ति ते।
औरसो यदि वा पुत्रस्तथवा पुत्रिकासुतः ॥
विद्यते न हि तेषां तु विज्ञेयाः क्षेत्रजादयः।
एकादश पृथग्गोत्रा वंशमात्रकरास्तु ते ॥
श्राद्धादि दासवत्सर्वे तेषां कुर्वन्ति नित्यशः।
गूढोत्पन्नश्च कानीनः सहोढः क्षेत्रजस्तथा ॥
पौनर्भवश्च वैश्यानां राजदण्डभयादपि।
वर्जिताः पञ्च बलिनः शेषाः सर्वे भवन्ति हि ॥
शूद्राणां दासवृत्तीनां परपिण्डपजीविनाम्।
पराधीनशरीराणां न क्वचित्पुत्र इष्यते ॥

तस्माद्दासस्य दास्यां जायते दास एव हि "।

वशिष्ठ:—"शोणितशुक्रसंभव: पुरुषो मातापितृनिमित्तकस्तस्य प्रदानविक्रयपरित्यागेषु मातापितरौ प्रभवत:। न त्वेकं पुत्रं दद्यात्। स हि सन्तानाय पूर्वेषां, न तु स्त्री पुत्रं दद्यात्प्रतिगृह्णीयाद्वाऽन्यत्रानुज्ञानाद्भर्तु:, पुत्रं प्रतिग्रहीष्यन्बन्धूनाहूय राजनि चाऽऽवेद्य निवेशनस्य मध्ये व्याहृतिभिर्हुत्वाऽदूरेबान्धवमसंनिकृष्टमेव प्रतिगृह्णीयात्। संदेहे चोत्पन्ने दूरेबान्धवं शूद्रमिव स्थापयेद्विज्ञायते ह्येकेन बहूंस्त्रायते" इति।

न त्वेकं पुत्रं दद्यादिति ददाति: प्रदर्शनार्थ:। तेन विक्रयादावप्ययं निषेधो भवति। तथा पुत्रं प्रतिग्रहीष्यन्नित्यस्यापि प्रदर्शनार्थत्वाद्बन्धूनाहूयेत्यादि धर्मजातं क्रयादावपि कार्यं न्यायसाम्यात्। अदूरेबान्धवा यस्य सोऽदूरेबान्धव:। बान्धवानामदूरदेशत्वेन तस्य कुलीनता शक्या ज्ञातुम्। तेनादूरेबान्धवं विदिताभिजनं पुत्रं प्रतिगृह्णीयादित्यर्थ:। न पुनर्बन्धुसंनिधौ गृह्णीयादिति, बन्धूनाहूयेत्यनेनैव तत्सिद्धे:। असंनिकृष्टमसंबन्धिनमेव प्रतिगृह्णीयात्। जातिसंदेहे चोत्पन्ने दूरेबान्धवं व्यवहितदेशवर्तिबान्धवं शूद्रमिव स्थापयेदानिश्चयात्। महता यत्नेन निश्चयं कुर्यादिति तात्पर्यार्थ:। अत्र हेतुत्वेन श्रुतिमुपन्यस्यति—विज्ञायते ह्येकेन बहूंस्त्रायत इति, एकेन पुत्रेण बहून्पूर्वजांस्त्रायत इति। तस्माज्ज्ञाताभिजनमेव गृह्णीयान्नेतरमिति तात्पर्यार्थ:। क्रीतनामा पुत्रो भवति, यो मातापितृभ्यां विक्रीत: प्राप्यते। कृत्रिमसंज्ञकस्तु पुत्रो भवति, य: स्वयमेव त्वं मे पुत्रो भवेति पुत्र: क्रियते। यस्त्वहं ते पुत्रो भवामीत्यात्मानमप्रार्थित एव ददाति स स्वयंदत्तसंज्ञक: पुत्रो भवति। यस्तु परिणीयमानाया गर्भे विन्नो लब्ध: स पुत्र: सहोढज उच्यते।

मनु:—"क्रीणीयाद्यस्त्वपत्यार्थं मातापित्रोर्यमन्तिकात्।
स क्रीतक: सुतस्तस्य सदृशोऽसदृशोऽपि वा "॥

सदृशोऽसदृश इति गुणापेक्षं वचनं न जात्यपेक्षम्।

"सदृशं तु प्रकुर्याद्यं गुणदोषविचक्षणम्।
पुत्रं पुत्रगुणैर्युक्तं स विज्ञेयस्तु कृत्रिम: "॥

अत्र सदृशग्रहणं जात्यपेक्षम्।

"मातापितृविहीनो यस्त्यक्तो वा स्यादकारणात्।
आत्मानं स्पर्शयेद्यस्मै स्वयंदत्तस्तु स स्मृत: "॥

त्यागकारण पातित्यं, स्मर्यते इत्यात् ।

"या गर्भिणी संस्क्रियते ज्ञाताऽज्ञाताऽपि वा सती ।
वोढुः स गर्भो भवति सहोढ इति चोच्यते" ॥

मातापितृभ्यामुत्सृष्टः पातित्यादिकारणमन्तरेण त्यक्तो येन गृह्यते, स तस्यापविद्धसंज्ञकः पुत्रो भवति ।

मनुः—"मातापितृभ्यामुत्सृष्टः तयोरन्यतरेण वा ।
यं पुत्रं प्रतिगृह्णीयादपविद्धः स उच्यते" ॥१२८॥१२९॥१३०॥१३१ ॥
पिण्डदोंऽशहरश्चैषां पूर्वाभावे परः परः ॥ १३२ ॥

एषामुक्तानामौरसादीनां मुख्यामुख्यपुत्राणां मध्ये पूर्वस्य पूर्वस्याभाव उत्तर उत्तरः श्राद्धदाने धनादाने चाधिक्रियते । पुत्रप्रतिनिधीनां मध्ये दत्तक एव कलियुगे ग्राह्यः । अत एव कलौ निवर्तन्त इत्यनुवृत्तौ शौनकेनोक्तम्—

"दत्तौरसेतरेषां तु पुत्रत्वेन परिग्रहः" इति ।

यदा तु पुत्रिकायां कृतायामौरसो जायते तदाऽऽह मनुः—

"पुत्रिकायां कृतायां तु यदि पुत्रोऽनुजायते ।
समस्तत्र विभागः स्याज्ज्येष्ठता नास्ति हि स्त्रियाः" ॥

क्षेत्रजं प्रति विशेषमाह मनुरेव—

"यद्येकरिक्थिनौ स्यातामौरसक्षेत्रजौ सुतौ ।
यद्यस्य पैतृकं रिक्थं तत्स गृह्णीत नेतरः" ॥

एतत्क्षेत्रजस्य ह्यामुष्यायणस्य बीजिधनेऽधिकारित्वं विधत्ते । वसिष्ठस्तु दत्तके पुत्रे सत्यौरसोत्पत्तौ विशेषमाह—

"तस्मिंश्चेत्प्रतिगृहीत औरसः पुत्र उत्पद्यते चतुर्थभागभागी स्यात्" इति ।

सर्वे च न्यूनाधिकभागविकल्पाः सगुणनिर्गुणापेक्षया व्यवस्थापनीयाः । सर्वेषां च पुत्रप्रतिनिधीनां पूर्वाभावे परेषां दायहरत्वे सत्यपि केचिद्दायादाः केचिन्न नेति यदुच्यते मन्वादिभिस्तत्रायमभिप्रायः—पितृसपिण्डस्यापुत्रदायहारिणस्त एव पुत्रप्रतिनिधयो भवन्ति, ये दायादत्वेन निर्दिष्टा नेतर इति ॥ १३२ ॥

सर्वेषामेव पूर्वोक्तानां पुत्रप्रतिनिधिलक्षणानां विशेषमाह—

सजातीयेष्वयं प्रोक्तस्तनयेषु मया विधिः ॥

गूढोत्पन्नादय आत्मनः सजातीया एव सवर्णा एव पुत्रत्वेन ग्राह्या नेतर इति तात्पर्यार्थः । शूद्रापुत्रः स्वे क्षेत्रे स्वयमुत्पादितश्चेति न प्रतिनिधिः किं त्वौरसः,

तथाऽपि प्रतिनिधिषु मनुना पठितः। तत्रायमभिप्रायः—अन्येष्वनुलोमजेष्वौरसेषु सत्सु न प्रतिनिधिरस्ति, शूद्रापुत्रस्त्वौरसे सत्यपि पुत्रप्रतिनिधिः कार्य एवेति।

मनुः—"यद्यपि स्यात्तु सत्पुत्रो यद्यपुत्रोऽपि वा भवेत्।

नाधिकं दशमाद्दद्याच्छूद्रापुत्राय धर्मतः" ॥

अपुत्रस्य दशमादंशादधिकं पत्न्यादयो गृह्णन्तीत्यर्थसिद्धम्।

जातोऽपि दास्यां शूद्रेण कामतोऽंशहरो भवेत्॥ १३३ ॥

मृते पितरि कुर्युस्तं भ्रातरस्त्वर्धभागिकम्।

अभ्रातृको हरेत्सर्वं दुहितॄणां सुतादृते ॥ १३४ ॥

शूद्रेण दास्यामुत्पन्नः पितुरिच्छातोऽंशहरो भवेत्। पिता यावन्तमंशं दातुमिच्छति तस्मै तावांस्तस्य भवतीत्यर्थः। मृते पितरि परिणीताः पुत्रास्तदीया भ्रातर एकस्य यावान्भागो भवति, तदर्धं तस्मै दद्युः। अभ्रातृकस्तु पितृपरिणीतोत्पन्नभ्रातृरहितो दौहित्रेष्वसत्सु सर्वं पित्र्यं हरेत्। सत्सु तु भागार्धमेव। अत्र शूद्रग्रहणाद्द्विजोत्पन्नस्य दासीपुत्रस्य पितृधनांशहरत्वं नास्तीति गम्यते॥ १३३॥१३४ ॥

पुत्रतत्प्रतिनिधिरहितस्य मृतस्य धनभाजां क्रममाह—

पत्नी दुहितरश्चैव पितरौ भ्रातरस्तथा।

तत्सुता गोत्रजो बन्धुशिष्यसब्रह्मचारिणः॥ १३५ ॥

एषामभावे पूर्वस्य धनभागुत्तरोत्तरः।

स्वर्यातस्य ह्यपुत्रस्य सर्ववर्णेष्वयं विधिः॥ १३६ ॥

अपुत्रस्याविद्यमानमुख्यगौणपुत्रस्य स्वर्यातस्य मृतस्य धनभाग्धनग्राही पत्न्यादीनां क्रमेण निर्दिष्टानां पूर्वस्य पूर्वस्याभाव उत्तर उत्तरो वेदितव्यः। एष विधिः सर्ववर्णसाधारणः।

बृहस्पतिः—"आम्नाये स्मृतितन्त्रे च लोकाचारे सूरिभिः।

शरीरार्धं स्मृता भार्या पुण्यापुण्यफले समा॥

यस्य नोपरता भार्या देहार्धं तस्य जीवति।

जीवत्यर्धशरीरेऽर्थं कथमन्यः समाप्नुयात्॥

सकुल्यैर्विद्यमानैस्तु पितृभ्रातृसनाभिभिः।

असुतस्य प्रमीतस्य पत्नी तद्भागहारिणी।

पूर्वं मृता त्वग्निहोत्रं मृते भर्तरि तद्धनम्।

विन्देत्पतिव्रता नारी धर्म एव सनातनः॥

जङ्गमं स्थावरं हेमकुप्यधान्यरसाम्बरम्।

आदाय दापयेच्छ्राद्धं मासषाण्मासिकादिकम् ।
पितृव्यगुरुदौहित्रान्स्वस्रभर्त्रीयमातुलान् ।
पूजयेत्कव्यपूर्ताभ्यां वृद्धानाथातिथीन्स्त्रियः ॥
तत्सपिण्डा बान्धवाश्च ये तस्याः परिपन्थिनः ।
हिंस्युर्धनानि तान्राजा चौरदण्डेन शासयेत् " ॥

विष्णुः—"अपुत्रस्य धनं पत्न्यभिगामि, तदभावे दुहितृगामि, तदभावे पितृगामि, तदभावे मातृगामि, तदभावे भ्रातृगामी, तदभावे भ्रातृपुत्रगामि, तदभावे बन्धुगामि, तदभावे सकुल्यगामि, तदभावे सहाध्यायगामि, तदभावे ब्राह्मणधनवर्ज्जं राजगामि" ।

बृहस्पतिः—"मृतोऽनपत्योऽभार्यश्चेदभ्रातृपितृमातृकः ।
सर्वं सपिण्डास्तद्दायं विभजेरन्यथांशतः " ॥

शङ्खः पुनरन्यथा क्रममाह—
"अथापुत्रस्य स्वर्यातस्य भ्रातृगामि द्रव्यं, तदभावे मातापितरौ लभेतां पत्नी वा ज्येष्ठा " इति ।

देवलः—"ततो दायमपुत्रस्य विभजेरन्सहोदराः ।
तुल्या दुहितरो वाऽपि ध्रियमाणः पिताऽपि वा ॥
सवर्णा भ्रातरो माता भार्या चेति यथाक्रमम् " इति ॥

नारदोऽपि—"भ्रातॄणामप्रजाः प्रेयात्कश्चिच्चेत्प्रव्रजेत् वा ।
विभजेरन्धनं तस्य शेषास्ते स्त्रीधनं विना ॥
भरणं चास्य कुर्वीरन्स्त्रीणामाजीवितक्षयात् ।
रक्षन्ति शय्यां भर्तुश्चेदाच्छिन्द्युरितरासु तत् " ॥

तथा—"अन्यत्र ब्राह्मणात्किं तु राजा धर्मपरायणः ।
तत्स्त्रीणां जीवनं दद्यादेष दायविधिः स्मृतः " इति ॥

एवमेषां वाक्यानामापाततः प्रतिभासमानविरोधानां विरोधपरिहारेण प्रामाण्यसिद्धये भिन्नविषयता वाच्या । अत्र केचिदाहुः—या देवरादन्यस्मादाऽपि सपिण्डाद्गुरुश्वशुरादिवचनात्पुत्रमिच्छति, तद्विषयं पत्नीदुर्हितर इत्यादिवचनमिति । तदयुक्तं, दुष्परिहारो हि बहुतरस्त्वत्यन्तरविरोधोऽत्र पक्षे । तथा हि—"रिक्थलोभान्नास्ति नियोगः " इति वसिष्ठः । अनेन हि रिक्थग्राहिण्या नियोगानधिकार उच्यते । ननु मा भूत्तस्मान्नियोगः पूर्वमेव नियुक्तायाः पश्चाद्धनभाक्त्वं "पत्नी दुहितरः" इत्यनेन विधीयतां, तदसत्, । तथा हि सति तेनैव जनिष्यमाणेन क्षेत्रजेन पुत्रेण धन-

स्वामिनोऽतीतस्य पुत्रवत्त्वं स्यात्। अपुत्रस्य धनं पत्नी भजत इति पत्नी दुहितर इत्यनेन विधीयते। अत एव मनुः—

"धनं यो बिभृयाद्भ्रातुर्मृतस्य स्त्रियमेव वा।

सोऽपत्यं भ्रातुरुत्पाद्य दद्यात्तस्यैव तद्धनम्" इति॥

तस्यैव तत्र तु जनन्या इत्यर्थः।

"संस्थितस्यानपत्यस्य गोत्रात्पुत्रं समाहरेत्।

तत्र यो रिक्थभागः स्यात्तं तस्मै प्रतिपादयेत्"॥

तस्मै तत्तत्रेऽपत्यायेत्यर्थः। तत्र नियोगार्थित्वं रिक्थग्राहित्वे विरुद्धत्वात्कथमिव हेतुः। विरोधमेव गौतमः स्पष्टयति—

"पिण्डगोत्रार्षसंबद्धा रिक्थं विभजेरन्स्त्री वाऽन-

पत्यस्य बीजं वा लिप्सेत" इति।

अनेन ह्यनपत्यभर्तृधनग्राहित्वस्य बीजलिप्सासूचितनियोगार्थित्वस्य च विकल्पः प्रतिपाद्यते। अतः स्पष्टो विरोधः। वृद्धमनुरपि—

"अपुत्रा शयनं भर्तुः पालयन्ती व्रते स्थिता।

पत्न्येव दद्यात्तत्पिण्डं कृत्स्नमंशं लभेत च"॥

इति वदन्नियोगार्थिन्या नास्ति रिक्थग्राहित्वमिति स्पष्टयति। तथा हि सति भर्तुः शयनं पालयन्तीति न वाच्यं स्यात्। तस्मान्नेयं व्यवस्था युज्यते।

कथं तर्हि विरोधपरिहारः। उच्यते—"अपुत्रा शयनं भर्तुः" इत्यादिमनुवाक्योक्तगुणा पत्नी पितृभ्रातृसद्भावेऽपि स्वयमेव पतिधनं समग्रं गृह्णाति, पत्युश्च श्राद्धादि करोति। अनेनैवाभिप्रायेण बृहस्पतिनाऽप्युक्तम्—

"पितुः पुत्रेण कर्तव्या पिण्डदानोदकक्रिया।

पुत्राभावे तु पत्नी स्यात्तदभावे सहोदरः" इति॥

तथा या पितृधनानुपघातेन स्वयमर्जयितुर्भर्तुः परिचर्यां यथावत्कृतवती संयतेन्द्रिया च सा भर्तुः सकलमेव धनं देवरेषु विद्यमानेष्वपि गृह्णाति। या तु तारुण्यादिना संभावितव्यभिचारा तस्यां विद्यमानायामपि मृतकस्य भर्तुर्भ्रातृगाम्येव वित्तं, न तु पत्नीगामि। तत्रापि चैषा व्यवस्था—यदि तद्भ्रातृभिः स्वपितृधनानुपघातेन संभूय समुत्थानेन धनमर्जितं, तदा पित्रोः सद्भावेऽपि भ्रातर एव धनग्राहिणः। यदा तु पितृपितामहाद्युपार्जितं धनं, तदा न भ्रातॄणां धनभागित्वं किन्तु पित्रोरिति। एवं विषयव्यवस्थायां सर्ववाक्याविरोधः। न च वाच्यमेकाकिनी स्त्री यज्ञेऽनधिकृता कथं यज्ञार्थतयोत्पन्नं गृह्णीयादिति। सर्वस्या एव धनोत्पत्तेर्यज्ञार्थत्वे प्रमाणाभावात्। येन हि—

"द्वादश रात्रीर्दीक्षितो भृतिं वन्वीत"

इत्येवमादिवचनविहिता सैव धनोत्पत्तिः क्रत्वर्था। अन्यथा तु पुरुषार्थैव। यदपि चार्थवादवचनम्—

"तस्मात्स्त्रियो निरिन्द्रिया अदायादाः"

इति, तदपि यथाप्राप्ति वर्णनीयमनुवादकत्वादिति पुत्रसद्भावविषयत्वेन व्याख्येयम्। अस्ति च स्त्रीणामेकाकिनीनामपि पूर्तधर्माधिकारः। तेन तत्र धनं ता उपयोक्ष्यन्ते। यत्तु नारदेन—"भ्रातृणामप्रजाः प्रेयात्" इत्यभिधायोक्तम्—

'भरणं चास्य कुर्वीरन्स्त्रीणामा जीवितक्षयात्"

इत्यादि, तत्पुनर्भूस्वैरिण्यादिविषयं वेदितव्यम्। स्त्रीशब्दमात्रप्रयोगात्। पत्नीशब्दस्तु विवाहयज्ञसंयोगिन्यामेव वर्तते "पत्युर्नो यज्ञसंयोगे" इति शब्दस्मृतेः। एवं पत्न्यामसत्यां पितृसमानवर्णा दुहितरोऽपुत्रधनस्वामिन्यः।

नारदः—"पुत्राभावे तु दुहिता तुल्यसंतानदर्शनात्।

पुत्रश्च दुहिता चोभौ पितुः संतानकारकौ"॥

तथा—"यथैवाऽऽत्मा तथा पुत्रः पुत्रेण दुहिता समा।

तस्यामात्मनि तिष्ठन्त्यां कथमन्यो धनं हरेत्"॥

बृहस्पतिः—"अङ्गादङ्गात्संभवति पुत्रवद्दुहिता नृणाम्।

तस्यां पितृधनं त्वन्यः कथं गृह्णीत मानवः॥

सदृशी सदृशेनोढा साध्वी शुश्रूषणे रता।

कृताकृता वा पुत्रस्य पितुर्धनहरी तु सा"॥

सदृशी सवर्णा। अतोऽसवर्णाया दुहितुरनधिकारो दायहरत्वे। कृताकृता पुत्रिकेत्यर्थः। अत्र च कृताकृता वेत्यनेन पुत्रिका दृष्टान्ततयोपादीयते, न पुनस्तस्या अपुत्रपितृधनग्राहित्वं विधीयते। न हि पुत्रिकापिताऽपुत्र इति शक्यते वक्तुं, पुत्रिकाया अपि पुत्रत्वात्। तथा च वसिष्ठः—"तृतीयः पुत्रिका विज्ञायते" इति। एतेन यदुक्तं केनचित्पत्नी दुहितर इत्यत्र दुहितृशब्देन पुत्रिकोच्यते इति तन्निरस्तं वेदितव्यम्। माता च पिता च पितरौ तौ पुत्रस्य पत्न्या दुहितृभिश्च रहितस्य धनग्राहिणौ। बृहस्पतिः—

"भार्यासुतविहीनस्य तनयस्य मृतस्य तु।

माता रिक्थहरी ज्ञेया भ्राता वा तदनुज्ञया"॥

मनुः—"अनपत्यस्य पुत्रस्य माता दायमवाप्नुयात्।

मातर्यपि च वृत्तायां पितुर्माता धनं हरेत्"॥

पित्रोरभावे भ्रातरस्ते तु सोदरा एव प्रत्यासन्नतरत्वात्। ते हि मृतभ्रातृपित्रोरेकस्यैव मातृवर्गस्य श्राद्धकारिणो न तु सापत्नाः। यत्तु शङ्खलिखितपैठीनसिवचः—

"अपुत्रस्य स्वर्यातस्य भ्रातृगामि धनं तदभावे
मातापितरौ लभेतां पत्नी वा ज्येष्ठा"

इत्यादि, तत्पितृधनानुपघातेनार्जितविभक्तधनेषु भ्रातृषु द्रष्टव्यम्। अतादृशभ्रातृभावे च पितरौ ज्येष्ठा वा पत्नी। उक्तलक्षणभ्रातृविलक्षणास्तु भ्रातरो याज्ञवल्क्योक्तक्रमातिक्रमेण रिक्थभाजो मन्तव्या इति सर्वमविरुद्धम्। यदपि देवलेनोक्तम्—

"ततो दायमपुत्रस्य विभजेरन्सहोदराः।
तुल्या दुहितरो वाऽपि म्रियमाणः पिताऽपि वा॥
सवर्णा भ्रातरो माता भार्या चेति यथाक्रमम्"

इति, तत्रापि शङ्खवचनव्यवस्थाप्रकारेण सोदराणां पत्र दायग्राहित्वं ज्ञातव्यम्। भ्रातृभावे तत्सुतास्तदभावे गोत्रजाः। तत्र प्रत्यासन्नः पूर्व धनभाक्। यदाह मनुः—

"अनन्तरः सपिण्डाद्यस्तस्य तस्य धनं भवेत्"

अनन्तरता च तेनैवोक्ता—

"त्रयाणामुदकं कार्यं त्रिषु पिण्डः प्रवर्तते।
चतुर्थः संप्रदत्तैषां पञ्चमो नोपपद्यते"॥

संप्रदानकारकीभूतानां पित्रादीनां त्रयाणां चोदकादिदाता, यश्च तत्संततिजोऽन्योऽपि तेषामेवोदकादिदाता स तस्य प्रत्यासन्नः, सपिण्डः। तदत्र तु सोदरो भ्राताऽतिशयेन प्रत्यासन्नः, समानसंप्रदानोदकादिदातृत्वात्। तत्पुत्रः पुनरीषद्व्यवहितः पितृपिण्डे संप्रदानत्वात्। तत्पौत्रस्तु ततोऽपि व्यवहितः पितृपितामहपिण्डयोर्भिन्नसंप्रदानकत्वात्। तत्पौत्रस्तत्यन्तव्यवहित पिण्डत्रयेऽपि संप्रदानभेदात्। एवं भ्राता तत्पुत्रस्तत्पौत्र इति पितृसंततौ त्रयः प्रत्यासन्नाः सपिण्डाः। एवं पितामहसंततौ प्रपितामहसंततौ च। एषामभावे पित्रादित्रयस्य ये प्रपौत्रास्तेषां पुत्रादित्रयं सापिण्ड्याद्धनग्राहकम्। गोत्रजाभावे बन्धुः पितृष्वसा मातृष्वसा मातुलसुतादिः। तदभावे शिष्य उपनीय वेदमध्यापितो धनभाग्भवति। तदभावे सब्रह्मचारी, एकाचार्यकः। यत्तु कात्यायनेनोक्तम्—

"विभक्ते संस्थिते द्रव्यं पुत्राभावे पिता हरेत्।
भ्राता वा जननी वाऽथ माता वा तत्पितुः क्रमात्"

इति, तत्र पुत्राभाव इत्येतप्रदर्शनार्थम्। तेन पत्न्या दुहितृणामभाव इति द्रष्टव्यम्। पितुरभावे माता, मात्राऽनुमतौ वा सा भ्रातैव।

"माता रिक्थहरी ज्ञेया भ्राता वा तदनुज्ञया" इति वचनात्।

एषामभावे मृतस्य पितामही, दुहितृदौहित्रानन्तरम्।

बृहस्पतिः—"तदभावे भ्रातरस्तु भ्रातृपुत्राः सनाभयः।

सकुल्या बान्धवाः शिष्याः श्रोत्रियाश्च धनार्हकाः" ॥

नारदः—"अभावे च दुहितॄणां सकुल्या बान्धवास्तथा।

ततः सजात्याः सर्वेषामभावे राजगामि तत्॥

अन्यत्र ब्राह्मणात्किं तु राजा धर्मपरायणः।

तत्स्त्रीणां जीवनं दद्यादेष दायविधिः स्मृतः" ॥

अत्राभावे दुहितॄणामिति पित्रोरप्यभाव उपलक्ष्यते। तत्स्त्रीणामपरिणीतानां स्वैरिणीनां वा पुनर्भुवाम् वा।

"सर्वेषामप्यभावे तु ब्राह्मणा रिक्थभागिनः।

त्रैविद्याः शुचयो दान्तास्तथा धर्मो न हीयते॥

अहार्यं ब्राह्मणद्रव्यं राज्ञा नित्यमिति स्थितिः।

इतरेषां तु वर्णानां सर्वाभावे हरेन्नृपः" ॥

नृपो जनपदस्य त्राता।

बृहस्पतिः—"ये पुत्राः क्षत्रविट्शूद्राः पत्नीभ्रातृविवर्जिताः।

तेषां धनहरो राजा सर्वस्याधिपतिर्हि सः" ॥

पैठीनसिः—"परिषद्गामि वा श्रोत्रियद्रव्यं न राजगामि, न हार्यं राज्ञा देवतागणसंस्थितं न निक्षेपोपनिधिक्रियाक्रमागतं न बालस्त्रीधनान्येवं ह्याह—

न हार्यं स्त्रीधनं राज्ञा तथा बालधनानि च।

नार्याः षडागमं वित्तं बालानां पैतृकं धनम्" ॥

श्रुतिः—"यो यत आददीत स तस्मै श्राद्धं कुर्यात्पिण्डं च त्रिपुरुषं दद्यात्" इति।

त्रिपुरुषमित्यमावस्याश्राद्धाभिप्रायम्।

विष्णुः—"अतः पितृवित्तालाभेऽपि पिण्डं दद्यात्"

पत्नी दुहितर इत्यत्र वाक्ये केचित्पर्यनुयुञ्जते, यथा—स्त्रियाः सभर्तृकाया एवेष्टापूर्तयोरधिकारी न तु केवलायास्तस्या भर्तृरहितत्वादेव च तया न कामः

सेवनीयः किंतु तपस्तीव्रम्। न च धर्मकामयोरनुपयुज्यमानोऽर्थो भवति पुरुषार्थः। तस्मात्पित्रादिषु धर्मकामोपयोगिधनभाजनेषु सत्सु न पत्नी धनभाक्, तस्मादपुत्रस्य मृतकस्य धनं पत्नी निर्वाहमात्रसमर्थमादद्यान्नाधिकं, तद्विषयं पत्न्या धनभाक्त्ववचनम्। यस्य तु पत्नीरहितस्य धनं दुहितृविवाहमात्रपर्याप्तं तद्विषयं दुहितॄणां धनग्राहित्वमनेनोच्यते। अतोऽधिकस्य मृतकधनस्य पत्नीदुहितृसद्भावेऽपि सपिण्डाः पित्रादय एव ग्राहकाः शङ्खादिवाक्यसामर्थ्याद्भवन्तीति मन्तव्यमिति।

तदयुक्तं, धनस्वामिनः प्रलये सति तद्धनेऽन्यस्य स्वामित्वोत्पत्तौ विधेयायां यथाऽऽह भगवान्—पत्न्या दुहितॄणां स्वामितोत्पन्नैव न नूत्पाद्या। "पाणिग्रहणाद्धि सहत्वम्" इत्यादिनाऽऽपस्तम्बवाक्येन भर्तृधने स्त्रीणां स्वामित्वं पाणिग्रहणमेव साधयतीति विधीयते। दुहितॄणां पुत्रवज्जन्मनैव पितृधने स्वामिभावसिद्धिरिति वेदितव्यम्। ततश्च पत्न्यां दुहितरि सत्यां तयोः स्वामित्वं बाधित्वा पित्रादिस्वामित्वविधिरनेन वाक्येन न कार्यः। अभावे तु पत्नीदुहित्रोर्बोधनिरपेक्षं विधायकत्वमस्येति वैरूप्यमापद्यते ततस्तत्परिहारार्थं पत्न्याद्यभाव एव पित्रादीनां धनभाक्त्वमिह प्रमेयम्। यत्तु शङ्खादिभिः पित्राद्यभावे पत्न्या धनग्राहकत्वमुच्यते, तत्कारणान्तरेण भर्तृधने यस्या अधिकारादिपदास्पदं स्वामित्वमपेतं तद्विषयं द्रष्टव्यम्। उक्तं च कारणान्तरं—"हृताधिकारां मलिनाम्" इत्यत्र भर्तृधने पत्न्याः स्वामित्वभ्रंशं प्रति। तस्मादुक्तैव व्यवस्था युक्ता। यदुक्तं स्त्रीणां स्वनिर्वाहसमर्थादधिकोऽर्थो निरर्थक इति, तदपि नैव युक्तम्। उक्तं हि स्त्रीणामभर्तृकाणां मन्त्राग्निसाध्यधर्मादन्यत्र धर्मे दानादावस्त्यधिकार इति। तेन स्वतन्त्रोपयुज्यमानेऽर्थे तासामुपयोगः ॥ १३५ ॥ १३६ ॥

अथ गृहस्थव्यतिरिक्तानामाश्रमिणां परेतानां धनग्राहकान्सक्रमकानाह—

वानप्रस्थयतिब्रह्मचारिणां रिक्थभागिनः ।
क्रमेणाऽऽचार्यसच्छिष्यधर्मभ्रात्रेकतीर्थिनः ॥ १३७ ॥

वानप्रस्थादीनामन्यतमस्य मृतस्य रिक्थमाचार्यादयः क्रमेण गृह्णीयुः। पूर्वस्य पूर्वस्याभाव उत्तर उत्तरो गृह्णीयादित्यर्थः। सद्गुणवाञ्छिष्यः सच्छिष्यः। धर्मभ्राता समानाचार्यः। एकतीर्थी एकसिद्धान्तः। एकवाराणसीप्रभृतितीर्थनिवासी वा। वानप्रस्थस्य धनमस्तीति वचनात्—

"त्यजेदाश्वयुजे मासि उत्पन्नं पूर्वसंचितम्"

इत्यस्मादवगम्यते। यतिब्रह्मचारिणोरपि कन्थादि किंचिदस्त्येव ॥ १३७ ॥

अपुत्रस्य धनं पत्नीदुहितॄणां पित्रोश्चाभावे भ्रातॄणां भवतीत्युक्तं तत्र विशेषमाह—

संसृष्टिनस्तु संसृष्टी सोदरस्य तु सोदरः ॥
दद्यादपहरेच्चांशं जातस्य च मृतस्य च ॥ १३८ ॥
अन्योदर्यस्तु संसृष्टी नान्योदर्यधनं हरेत् ॥
असंसृष्ट्यपि चादद्यात्सोदर्यो नान्यमातृकः ॥ १३९ ॥

विभक्तस्य धनस्य विभक्तैनैव धनान्तरेण मिश्रणं संसृष्टं तद्वान्संसृष्टी, तस्य मृतस्य धनं संसृष्टेव भ्राता हरेत्। भ्राताऽत्र सोदर एव न पुनरन्योदर्यः संसृष्ट्यपि। संसृष्टिनस्तु जातस्य तन्मरणोत्तरकालमुत्पन्नस्य पुत्रस्य तद्भागं तत्पुत्राय जीवन्संसृष्टी दद्यात्। एतच्चात्र प्रसङ्गादुक्तम्। अत्र बृहस्पतिः—

"विभक्तो यः पुनः पित्रा भ्रात्रा चैकत्र संस्थितः।
पितृव्येणाथवा प्रीत्या तत्संसृष्टः स उच्यते" ॥

अनेन त्रिविधाः संसृष्टिनो भवन्तीत्यनूद्यते। तेषां मध्यादपुत्रस्य संसृष्टिनोंऽशः सोदरेण संसृष्टिना ग्राह्य इति यदुच्यते तत्किं मृतस्य पत्न्यादिसद्भावे तद्विपर्यये चेति जिज्ञासायामाह—

"यदा कश्चित्प्रमीयेत प्रव्रजेद्वा कथंचन।
न लुप्यते तस्य भागः सोदरस्य विधीयते ॥
या तस्य भगिनी सा तु ततोंऽशं लब्धुमर्हति।
अनपत्यस्य धर्मोऽयमभार्यपितृकस्य च" इति ॥

अतश्च संसृष्टिनोऽपि यदि पत्न्यादयः सन्ति तदा पत्नी दुहितर इत्ययमेव क्रमः। यत्र भ्रातृणां रिक्थग्राहित्वे प्राप्ते संसृष्टिसोदरत्वसम्भवे तद्विशिष्टस्यैव भ्रातुर्धनभाक्त्वं नियम्यते। भगिन्याः सोदरभ्रात्रभावेऽधिकारिता कर्त्तव्या। अन्यथा "तस्मान्निरिन्द्रियाः स्त्रियोऽदायादाः" इति श्रुतिविरोधः स्यादिति। उक्तमेतत्संसृष्टिनो मृतकस्यांशं सोदर्यः संसृष्टी हरेदिति। एतदेव व्यतिरेकतः स्पष्टयितुमाह—

"अन्योदर्यस्तु संसृष्टी नान्योदर्यधनं हरेत्"।

निगदव्याख्यातमेतत्। यदा पुनरन्योदर्यः संसृष्टी न सोदरस्तदा कोंऽशहर इत्यपेक्षायामाह—

"असंसृष्ट्यपि चाऽदद्यात्सोदर्यो नान्यमातृकः"।

सोदर्यो यद्यप्यसंसृष्टी तथाऽपि स एवाऽऽददीत न पुनरन्योदर्यः संसृष्ट्यपि। अन्योदर्यस्य संसृष्टित्वं विशेषणमसंसृष्ट्यपीत्यपिशब्दादवगम्यते, तेनायमर्थः सिद्धः— यदि सोदरत्वं संसर्गित्वं च विद्यते तदा स एव तादृशस्यांशं हरति। यदा पुनः संसृष्टित्वमन्योदर्यस्य तदा सोदरत्वमेवांशहरत्वे निमित्तं नेतरदिति।

मनुः—"विभक्ताः सह जीवन्तो विभजेरन्पुनर्यदि ।
समस्तत्र विभागः स्याज्ज्यैष्ठ्यं तत्र न विद्यते" ॥

अनेन ज्यैष्ठ्यनिमित्तं विभागवैषम्यं निषिध्यते नान्यनिमित्तं, तेन संसर्गसमये तदीयं यावद्धनं संसृष्टं विभागसमये तदनुसारेणैव भागं लभते। अत्रैव विशेषान्तरमाह बृहस्पतिः—

"संसृष्टानां तु यः कश्चिद्विद्याशौर्यादिना धनम् ।
प्राप्नोति तस्य दातव्यो ह्यंशः शेषाः समांशिनः ॥
येषां ज्येष्ठः कनिष्ठो वा हीयेतांशप्रदानतः ।
म्रियेतान्यतरो वाऽपि तस्य भागो न लुप्यते ॥
सोदर्या विभजेरंस्तं समेत्य सहिताः समम् ।
भ्रातरो ये च संसृष्टा भगिन्यश्च सनाभयः" ॥

अंशप्रदानं विभागस्ततो हानिः पारिव्राज्यपातित्यादिनाऽनधिकारः। तस्य भागो न लुप्यते कल्पनीय इत्यर्थः। तं भागं सोदरा यदि संसृष्टिनस्तदा त एव गृह्णीयुः। नासंसृष्टिनः सोदर्या अपि। संसृष्टिनां सोदराणामभावे सर्वे सोदराः समेत्य मिलित्वा सहिताः समं प्रधानाभावेन समं न्यूनाधिकं न विभजेरन्। सोदराणामभावे भगिन्यः सनाभयः सोदर्या विभजेरन्निति शेषः। तासामप्यभावेऽन्योदर्या भगिन्यो भ्रातरश्च ॥ १३८ ॥ १३९ ॥

सर्वत्र विभागेऽनधिकृतानाह—

क्लीबोऽथ पतितस्तज्जः पङ्गुरुन्मत्तको जडः ।
अन्धोऽचिकित्स्यरोगाद्या भर्तव्यास्तु निरंशकाः ॥ १४० ॥

क्लीबाद्या निरंशकाः। अंशो भागस्तद्रहिताःकार्याः। भर्तव्यास्तु ते भवन्ति। क्लीवः षण्ढः। पतितो वक्ष्यते। तज्जः पतितोत्पन्नः। तस्य यद्यपि पतितग्रहणेनैव ग्रहणं सिद्धम्। उक्तं वसिष्ठेन—"पतितोत्पन्नः पतितो भवतीत्याहुः" इति। तथाऽपि तस्य पृथग्ग्रहणं कार्यम्। अन्यथा "औरसक्षेत्रजास्तेषाम्" इति वाक्यबलाद्भागहर्त्ता स्यात्। पङ्गुश्चरणरहितः। उन्मत्तक उन्मादी। उन्मादो रोगविशेषः। जडो मूढः। अन्धोऽचक्षुः। अचिकित्स्यरोगोऽप्रतिसमाधेयव्याधिः। आद्यशब्दः आश्रमान्तरीकाणां भागानर्हाणां संग्रहार्थः। तत्र नारदः—

"पितृद्विट्पतितः षण्ढो यश्च स्यादौपपातिकः ।
औरसा अपि नैतेऽंशं लभेरन्क्षेत्रजाः कुतः" ॥

पितृद्विट्पितृद्वेषी। उपपातकमुपपापः। तद्युक्त औपपातिकः।

मनुः—"सर्व एव विकर्मस्था नार्हन्ति भ्रातरो धनम् ।
दीर्घतीव्रामयग्रस्ता जडोन्मत्तान्धपङ्गवः ॥
अनंशौ क्लीबपतितौ जात्यन्धबधिरावपि ।
उन्मत्ता जडमूकाश्च ये च केचिन्निरिन्द्रियाः" ॥

वसिष्ठः—"अनंशास्त्वाश्रमान्तरगताः" । गृहस्थाश्रमादितराश्रमान्तरगताः ।

कात्यायनः—"अक्रमोढासुतश्चैव सगोत्राद्यश्च जायते ।
प्रव्रज्यावसितश्चैव न रिक्थं तेषु चार्हति" ॥

अक्रमेण वर्णक्रमजन्मक्रमातिक्रमेण वोढा तस्याः सुतोऽक्रमोढासुतः । सगोत्रात्स्वीयादेवस्या समानगोत्रात्परिणेतुर्यो जायते । एतेषां च वाचनिकमंशानार्हत्वं, न पुनर्धर्मानधिकारित्वहेतुकं, धर्मानधिकारिताया हेत्वभावात् । यद्यपि पतितस्य धर्मानधिकारस्तथाऽपि नान्धपङ्ग्वादीनां, तेषां स्वाध्यायेत्यणाद्यङ्गवत्येव धर्मविशेषेऽनधिकारी न सामान्यतो धर्ममात्रे । अस्ति हि तेषामिष्टे धर्मे गृहस्थाद्युक्तोऽधिकारः । कृतदारा हि ते । तथा हि मनुः—

"यद्यर्थिता तु दारैः स्यात्क्लीबादीनां कथंचन ।
तेषामुत्पन्नतन्तूनामपत्यं दायमर्हति" ॥

अतः क्लीबादीनां दारवत्त्ववचनात्तेषामुपनयनमस्तीति गम्यते । न च वाच्यं दारपरिग्रहे सति पश्चादन्धत्वादिदोषोदये विषये यद्यर्थितेति वचनमिति । तथा सति पूर्ववाक्ये जात्यन्धग्रहणं न क्रियेत । भवतु वा जात्यन्धादीनामुपनयनदारपरिग्रहाभावादिष्टे धर्मे तेषामनधिकारः, पूर्ते तु शूद्रादिवदस्त्येव । तस्मान्न धर्मानधिकारित्वहेतुकं तेषामनंशत्वं, किं तु वाचनिकमेव । यत्तु बौधायन आह—

"अतीतव्यवहारान्ग्रासाच्छादनैर्बिभृयुरन्धजडक्लीबव्यसनिव्याधितादींश्चाकर्मिणः पतिततज्जातवर्जम्" इति ।

अकर्म कृष्यादिकं जीविकात्मकं येषां न विद्यते त इति, पतिततज्जातवर्जमिति पतितं तज्जातं च वर्जयित्वाऽन्यान्बिभृयादित्यर्थः ॥ १४० ॥

क्लीबादीनामनंशत्वेन तत्पुत्राणामनंशत्वं प्राप्तं तदपवादमाह—

औरसाः क्षेत्रजास्त्वेषां निर्दोषा भागहारिणः ।
सुताश्चैषां प्रभर्तव्या यावद्वै भर्तृसात्कृताः ॥ १४१ ॥
अपुत्रा योषितश्चैषां भर्तव्याः साधुवृत्तयः ।
निर्वास्या व्यभिचारिण्यः प्रतिकूलास्तथैव च ॥ १४२ ॥

एषां क्लीबादीनामौरसाः क्षेत्रजाश्च पातित्यादिदोषरहिता अंशं लभते। क्लीबस्यापत्यंचिकित्सादिवशाद्भवति, तेषां च कन्यका आ विवाहाद्भर्त्तव्याः। एषामेव च योषितोऽपुत्राः परिणीता भर्तव्या यदि साध्व्यः। व्यभिचारिण्यो देवरादि-प्रतिकूलाश्च निर्वास्या गृहाद्बहिष्कार्याः। कन्यकास्तु पतितोत्पन्ना अपि पोष्या विवाहयितव्याश्च। यदाह वसिष्ठः—

"पतितोत्पन्नः पतितो भवतीत्याहुरन्यत्र स्त्रियाः सा
हि परगामिनी" इति ॥ १४१ ॥ १४२ ॥

स्त्रियामंशहरत्वाभावे स्त्रीधनहर्तृ नये विवक्षुः स्त्रीधनस्वरूपं तावदाह—

पितृमातृसुतभ्रातृदत्तमध्यग्न्युपागतम्।
आधिवेदनिकं चैव स्त्रीधनं परिकीर्तितम् ॥ १४३ ॥

पित्रादिभिर्यद्दत्तमध्यग्नि विवाहकालेऽग्निमधिकृत्य यल्लभ्यते, तदध्यग्नि। अधिवेदननिमित्तमाधिवेदनिकम्। विद्यमानायां भार्यायां भार्यान्तरपरिणयनमधिवेदनम् चशब्द आद्यर्थः। तेन च स्त्रीधनान्तरपरिग्रहः। तद्यथा—कार्याः पत्न्याः समांशिकाः। माताऽप्यंशं समं हरेत्। स्वात्स्वादंशाच्चतुर्भागं मातुः परिणाह्यं स्त्रियो विभजेरन्। अन्यदपि यत्स्त्रीस्वामिकं तत्स्त्रीधनमिति मन्वादिभिः परिकीर्तितम्। कात्यायनः—

"विवाहकाले यत्स्त्रीभ्यो दीयते ह्यग्निसंनिधौ।
तदध्यग्निकृतं सद्भिः स्त्रीधनं परिकीर्तितम् ॥
यत्पुनर्लभते नारी नीयमाना पितुर्गृहात्।
अध्यावहनिकं नाम स्त्रीधनं परिकीर्तितम् ॥
प्रीत्या दत्तं तु यत्किंचिच्छ्वश्र्वा वा श्वशुरेण वा।
पादवन्दनिकं तत्तु लावण्यार्जितमुच्यते ॥
ऊढायाः कन्यकाया वा पत्युः पितृगृहेऽपि वा।
भ्रातुः सकाशात्पित्रोर्वा लब्धं सौदायिकं स्मृतम्"

वृद्धव्यासः—"यत्कन्यया विवाहे च विवाहात्परतश्च यत्।
पितृभ्रातृगृहात्प्राप्तं तत्तु सौदायिकं स्मृतम्" ॥

तथा—"विवाहकाले यत्किंचिद्वरायोद्दिश्य दीयते।
कन्यायास्तद्धनं सर्वमविभाज्यं च बन्धुभिः" ॥

कात्यायनः—"सौदायिकं धनं प्राप्य स्त्रीणां स्वातन्त्र्यमिष्यते।

यस्मात्तदानृशंस्यार्थं तेदत्तमुपजीवनम् ॥
सौदायिके सदा स्त्रीणां स्वातन्त्र्यं परिकीर्तितम् ।
विक्रये चैव दाने च यथेष्टं स्थावरेष्वपि " ॥

यत्पुनराह नारदः—"भर्त्रा प्रीतेन यद्दत्तं स्त्रियै तस्मिन्मृतेऽपि तत् ।
सा यथाकाममश्नीयाद्दद्याद्वा स्थावरादृते "

इति, तत्प्रीतिदत्तस्थावरविषयम् ।

कात्यायनः—"विवाहात्परतो यत्तु लब्धं भर्तृकुलात्स्त्रिया ।
भर्तुः पित्रोः सकाशाद्वा अन्वाधेयं तु तद्भृगुः ॥
गृहोपस्करवाह्यानां दोह्याभरणकर्मिणाम् ।
मूल्यलब्धं तु यत्किंचिच्छुल्कं तत्परिकीर्तितम् " ॥

व्यासः—"द्विसाहस्रः परो दायः स्त्रियै देयो धनस्य च ।
यच्च भर्त्रा धनं दत्तं सा यथाकाममाप्नुयात् " ॥

प्रत्यब्दं कार्षापणसहस्रद्वयपरिमितो धनस्यैकदेशः परो दायः स्त्रियै देयः । परः परमः । दीयत इति दायः । तमिमं दायं भर्तृदत्तं वाऽनिषिद्धेन मार्गेण यथाकामं देवरादेरनुमतिमन्तरेणाप्याप्नुयात् । अतोऽधिके तु देवराद्यनुमतिरपेक्षणीयेत्यर्थाद्गम्यते ।

मनुः—"पत्यौ जीवति यः स्त्रीभिरलंकारो धृतो भवेत् ।
न तं भजेरन्दायादा भजमानाः पतन्ति ते " ॥

सततधृतालंकारविषयमेतत् ।

कात्यायनः—"न भर्ता नैव च पिता न सुतो भ्रातरो न च ।
आदाने वा विसर्गे वा स्त्रीधने प्रभविष्णवः ॥
यदि ह्येकतरोऽप्येषां स्त्रीधनं भक्षयेद्बलात् ।
सवृद्धिं प्रतिदाप्यः स्याद्दण्डं चैव समाप्नुयात् " ॥
जीवन्त्याः पतिपुत्रास्तु देवराः पितृबान्धवाः ।
अनीशाः स्त्रीधनस्योक्ता दण्ड्यास्तत्पहरन्ति ये " ॥

मनुः—"जीवन्तीनां तु तासां ये तद्धरेयुः स्वबान्धवा ।
तांश्छिष्याच्चौरदण्डेन धार्मिकः पृथिवीपतिः " ॥

मृतानां स्त्रीणां धने बान्धवानामप्यधिकारो विवाहविशेषोपाधौ विद्यत इत्यभिप्रायेणोक्तम्—जीवन्तीनामिति ॥ १४३ ॥

यदर्थं स्त्रीधनलक्षणमुक्तं तदिदानीमाह—

बन्धुदत्तं तथा शुल्कमन्वाधेयकमेव च ।
अप्रजायामतीतायां बान्धवास्तदवाप्नुयुः ॥ १४४ ॥

बन्धुभिः पितृव्यमातुलादिभिर्यद्दत्तं यच्च शुल्कं यच्चान्वाधेयकमित्यनेन सर्वमेव स्त्रीधनमुपलक्षितं तत्स्त्रियामनपत्यायामतीतायां बान्धवा अवाप्नुयुः । बान्धवसंबन्धि तद्भवतीत्यर्थः ॥ १४४ ॥

उक्तं सामान्येन बान्धवा अवाप्नुयुरिति, इदानीं यस्मिन्विषये बान्धवा येऽधिक्रियन्ते तदाह—

अप्रजस्त्रीधनं भर्तुर्ब्राह्मादिषु चतुर्ष्वपि ॥
दुहितॄणां प्रसूता चेच्छेषेषु पितृगामि तत् ॥ १४५ ॥

अनपत्यायाः स्त्रिया ब्राह्मदैवार्षप्राजापत्यविवाहप्राप्ताया धनं तद्भर्तुर्भवति । आसुरगान्धर्वराक्षसपैशाचविवाहलब्धायास्तु तदीयं धनं पितृगामि भवति । प्रसूताऽपत्यवती चेद्दुहितॄणामेव । एतच्च सर्वविवाहविषयम् । पुत्रसद्भावेऽपि दुहितृगामि मातृधनमित्येतदर्थमिदमिति । अतो मातुर्दुहितर इत्यनेन गतार्थम् । न हि तत्राधिकारक्रम उक्तः । अत एव कात्यायनः—

"दुहितॄणामभावे तु रिक्थं पुत्रेषु तद्भवेत् ।
बन्धुदत्तं तु बन्धूनामभावे भर्तृगामि तत्" ॥

उत्तरार्धमासुरादिविवाहचतुष्टयोढाविषयम् ।

मनुः—"स्त्रियास्तु यद्भवेद्वित्तं पित्रा दत्तं कथंचन ।
ब्राह्मणी तद्धरेत्कन्या तदपत्यस्य वा भवेत्" ॥

यच्च तेनैवोक्तम्—"ब्राह्मदैवार्षगान्धर्वप्राजापत्येषु यद्भवेत् ।
अतीतायामप्रजसि भर्तुरेव तदिष्यते" ॥

इति, तत्र गान्धर्वविवाहोढाया धनस्य भर्तृगामितया विकल्प इति मन्तव्यम् । यतः स एवाऽऽह—

"यत्तस्यै स्याद्धनं दत्तं विवाहेष्वासुरादिषु ।
अतीतायामप्रजसि मातापित्रोस्तदिष्यते" ॥

आसुरविवाहकन्याशुल्कभाक्तु सोदरभ्रातॄणां तदभावे मातुः । यदाह गौतमः—
"भगिनीशुल्कं सोदर्याणामूर्ध्वं मातुः" ।

बौधायनः—"रिक्थं मृतायाः कन्याया गृह्णीयुः सोदराः स्वयम् ।
तदभावे भवेन्मातुस्तदभावे पितुर्भवेत्" ॥

मनुः—"अप्रजायां मृतायां तु पुत्रिकायां कथंचन ।

धनं तत्पुत्रिकाभर्ता हरेदेवाविचारयन् " ॥

अस्यां यो जायते पुत्रः स मे पुत्र इत्येवं कृतायां पुत्रिकायामेतत् । या पुनरियं मे पुत्र इति क्रियते तद्विषयमाहतुः शङ्खलिखितौ—

"प्रेतायाः पुत्रिकाया न भर्ता धनमर्हत्यपुत्रायाः " ।

पैठीनसिः—"प्रेतायां पुत्रिकायां न भर्ता धनमर्हति । अपुत्रायां माता श्वश्रूर्वा तद्गृह्णीयात् " ।

बृहस्पतिः—"मातुःस्वसा मातुलानी पितृव्यस्त्री पितृष्वसा ।

श्वश्रूः पूर्वजपत्नी च मातृतुल्याः प्रकीर्तिताः ॥

यदासामौरसो न स्यात्पुत्रो दौहित्र एव वा ।

तत्सुतो वा धनं तासां स्वस्रीयाद्याः समाप्नुयुः " ॥

पूर्वजस्य ज्येष्ठस्य पत्नी पूर्वजपत्नी ॥ १४५ ॥

स्त्रीधनविभागप्रसङ्गाद्वाग्दत्ताविषयं किंचिदाह—

दत्त्वा कन्यां हरन्दण्ड्यो व्ययं दद्यात्सहोदयम् ॥

मृतायां सर्वमादद्यात्परिशोध्योभयव्ययम् ॥ १४६ ॥

वाचा वराय क्लैब्यादिदोषरहिताय कन्यां दत्त्वाऽन्यस्य श्रेयसो वरस्य लाभे यस्तस्माद्धरति न ददाति, स राज्ञा दण्ड्यः । यावतो धनस्य वरेण व्ययः कृतस्तावत्सवृद्धिकं धनं वराय च दद्यात् । राज्ञा दाप्य इत्यर्थः । तथा प्राग्विवाहात्कन्यायां मृतायां च धनं विवाहनिमित्तं कन्यापित्रे वरेण दत्तं तेन कन्यापितुर्वरस्य च विवाहनिमित्तं धनव्ययं परिशोध्य शेषं वर आददीत ॥ १४६ ॥

उक्तं मृताया धनविषयनिर्णये भर्ता गृह्णीयादिति, इदानीं दुर्भिक्षादौ गृहीतं स्त्रीधनं न भर्ता स्त्रियै दद्यादित्याह—

दुर्भिक्षे धर्मकार्ये च व्याधौ संप्रतिरोधके ॥

गृहीतं स्त्रीधनं भर्ता न स्त्रियै दातुमर्हति ॥ १४७ ॥

दुर्भिक्षमन्नाभावः । धर्मकार्ये यदावश्यकं न तु काम्यम् । व्याधिस्तीव्रो दीर्घश्च तत्प्रतिक्रियार्थम् । संप्रतिरोधो निगडादिबन्धः । एतेषु निमित्तेषु स्वकीयधनाभावे स्त्रीधनं गृहीत्वा आपदस्तरेत् । प्रतिदानसमर्थधनाभावे च तत्तस्यै न दद्यात् । ऋणाद्यलाभरूपापद्विषयमेतत् । अत एव देवलः—

"वृत्तिराभरणं शुल्कं लाभश्च स्त्रीधनं भवेत् ।

भोक्त्री तत्स्वयमेवेदं पतिर्नार्हत्यनापदि ॥

वृथादाने च भोगे च स्त्रियै दद्यात्सवृद्धिकम् ।
पुत्रार्तिहरणे वाऽपि स्त्रीधनं भोक्तुमर्हति ॥

द्यूतगीतादिप्रयोजनो धनव्ययो वृथादानम् । भोगस्त्वन्नपानाद्युपयोगः । पुत्रार्तिहरणे स्त्रीधनमुपभोग्यं ग्राह्यमित्यर्थः ।

कात्यायनः—"न भर्ता नैव च सुतो न पिता भ्रातरो न च ।
आदाने वा विसर्गे वा स्त्रीधने प्रभविष्णवः ॥
यदि ह्येकतरोऽप्येषां स्त्रीधनं भक्षयेद्बलात् ।
सवृद्धिं प्रतिदाप्यः स्याद्दण्डं चैव समाप्नुयात् ॥
तदेव यद्यनुज्ञाप्य भक्षयेत्प्रीतिपूर्वकम् ।
मूल्यमेव प्रदाप्यः स्याद्यदाऽसौ धनवान्भवेत् ॥
व्याधितं व्यसनस्थं च धनिकैर्वाऽपि पीडितम् ।
ज्ञात्वा निसृष्टं यत्प्रीत्या दद्यादात्मेच्छया तु सः" ॥

यत्स्त्रिया भर्तारं व्याध्यादिव्यसनेभ्यो मोचयितुं धनं विसृष्टं दत्तं तदात्मेच्छया तस्यै दद्यात् ।

"अथ चेत्स द्विभार्यः स्यान्नैव तां भजते पुनः ।
प्रीत्या निसृष्टमपि चेत्प्रतिदाप्यः स तद्बलात् ॥
ग्रासाच्छादनवासानामाच्छेदो यत्र योषितः ।
तत्र स्वमाददीत स्त्री विभागं रिक्थिनां तथा ॥
लिखितस्येति धर्मोऽयं प्राप्ते भर्तृकुले वसेत्" ।

लिखितस्य महर्षेर्मतोऽयं धर्मः । यद्वा भर्तृदेयस्य स्त्रीधनस्य पुत्रनिविष्टस्यायं धर्मः । प्राप्ते च धने स्त्री भर्तृकुले वसेन्नान्यत्र ।

"व्याधिता प्रेतकाले च गच्छेद्बन्धुकुलं ततः ॥
अपकारक्रियायुक्ता निर्लज्जा चार्थनाशिका ।
व्यभिचाररता या च स्त्रीधनं सा च नार्हति ॥
यज्ञार्थं द्रव्यमुत्पन्नं तस्माद्द्रव्यं नियोजयेत् ।
स्थानेषु धर्मनिष्ठेषु न स्त्रीमूर्खविधर्मिसु ॥
भर्त्रा प्रतिश्रुतं देयमृणवत्स्त्रीधनं सुतैः ।
तिष्ठेद्भर्तृकुले या तु तथा पितृकुले वसेत्" ॥ १४७ ॥

अधिवेदनविषयमाह—

अधिविन्नस्त्रियै देयमाधिवेदनिकं समम् ॥

न दत्तं स्त्रीधनं यस्यै दत्ते त्वर्धं प्रकीर्तितम् ॥ १४८ ॥

यस्यां भार्यायां सत्यामन्या परिणीयते साऽधिविन्ना, सा चासौ स्त्री—अधिविन्नस्त्री तस्यै, आधिवेदनिकमधिवेदननिमित्तमधिविन्नेति कृत्वा यद्दीयते तदित्यर्थः। तच्च समं, केनेत्यपेक्षिते प्रकृतत्वादधुना परिणीतायै यद्दत्तं तेनेति गम्यते। एतच्च यस्यै स्त्रीधनं न दत्तं तस्यै देयम्। दत्ते तु तस्मिन्नर्धमेव देयं न समम्। अर्धशब्दोऽयं न समत्वप्रविभागवृत्तिः। एतच्च दत्ते स्त्रीधने तावद्दद्याद्यावदाधिवेदनिकसमं भवतीत्यर्थः ॥ १४८ ॥

विभागसदसद्भावविवादे तत्सद्भावनिर्णयकारणान्याह—

विभागनिह्नवे ज्ञातिबन्धुसाक्ष्यभिलेखितैः ॥

विभागभावना ज्ञेया गृहक्षेत्रैश्च यौतकैः ॥ १४९ ॥

नास्त्यावयोर्धने विभाग इति विभागस्य निह्नवेऽपलापे ज्ञात्यादिभिर्विभागभावना ज्ञेया। तथा यौतकैः पृथग्भूतैर्गृहक्षेत्रादिभिर्विभागभावना ज्ञेया। ज्ञात्यादयः साक्ष्यादयो विभागे ज्ञातीनां साक्षित्वात्। गृहक्षेत्रग्रहणं च शास्त्रान्तरोक्तविभागप्रमाणप्रदर्शनार्थम्।

नारदः—"दारग्रहणपञ्चयज्ञगृहक्षेत्रपरिग्रहाः।

विभक्तानां पृथग्ज्ञेयाः पाकधर्मागमव्ययाः॥

साक्षित्वं प्रातिभाव्यं च दानं ग्रहणमेव च।

विभक्ता भ्रातरः कुर्युर्नाविभक्ताः परस्परम्॥

येषामेताः क्रिया लोके प्रवर्तन्ते स्वरिक्थिषु।

विभक्तानवगच्छेयुर्लेख्यमप्यन्तरेण तान्" इति॥

बृहस्पतिः—"पृथगायव्ययधनाः कुसीदं च परस्परम्।

वणिक्पथं च ये कुर्युर्विभक्तास्ते न संशयः"॥

वणिक्पथो वणिज्या।

नारदः—"यद्येकजाता बहवः पृथग्धर्माः पृथक्क्रियाः।

पृथक्कर्मगुणोपेता न चेत्कार्येषु संमताः॥

स्वभागान्यदि वा दद्युस्ते विक्रीयुरथापि वा।

कुर्युर्यथेष्टं तत्सर्वमीशास्ते स्वधनस्य वै"॥

अस्यार्थः—यदि भ्रातरः पृथक्परस्परानुमतिमन्तरेण धनसाध्यधर्मकर्मिणो यदि च तथैव पृथग्वित्तव्ययात्मककृष्यादिक्रियाकारिणस्तथा कर्म गुणो लाभः क्षयी वा

तेनोपेताः स्युः, तथा कार्यान्तरेष्वपि पर्षद्ग्रामादिविषयेषु विरुद्धास्ते विभक्ता इति ज्ञेयम्। अथ ते स्वभागविक्रयादिकं यथेष्टं कुर्युः।

बृहस्पतिः—"येनांशो यादृशो भुक्तस्तस्य तं न विचालयेत्" ॥

तथा—"स्वेच्छाकृतविभागो यः पुनरेव विसंवदेत्।

स राज्ञांऽशे स्वके स्थाप्यः शासनीयोऽनुबन्धकृत्" ॥

अनुबन्ध आग्रहः।

कात्यायनः—"वसेयुर्ये दशाब्दानि पृथग्धर्माः पृथक्क्रियाः।

विभक्ता भ्रातरस्ते च विज्ञेयाः पैतृके धने ॥

विभक्ता वाऽविभक्ता वा दायादाः स्थावरे समाः।

एको ह्यनीशः सर्वत्र दानाधमनविक्रये" ॥

विभक्तधना अविभक्तधना वा दायादाः स्थावरे समा भवन्ति। तेषां मध्ये एकैको दानादौ समर्थो न भवतीत्यर्थः ॥ १४९ ॥

इति श्रीविद्याधरवंशप्रभवश्रीशिलाहारनरेन्द्रजीमूतवाहनान्वयप्रसूतश्रीमदपरादित्य-देवविरचिते याज्ञवल्कीयधर्मशास्त्रनिबन्धेऽपरार्के

दायविभागप्रकरणम् ॥ ८ ॥

ARHANNITI OR JAINA LAW

BY

HEMCHANDRA*

1150-1200.

——: o :——

PARTITION OF HERITAGE.

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Now begins the Chapter on Partition of Heritage.

1. Having made obeisance to the son of Lakshana (Chandra Prabhu) who is worshipped by gods beginning with Indra and who is endowed with immeasurable qualities fit to be celebrated in songs the chapter on Dayabhaga is composed.

2. Daya is what establishes one's right in ancestral property. It is of two kinds: the first is Sapratibandha (obstructed) and the second is Apratibandha (unobstructed).

3. Daya is in reference to property. Property is of two kinds: immoveable and moveable. That which is fixed is immoveable.

4. Property like houses and garden are immoveable. Gold, silver and the like, which pass from one hand to another by disposal, are moveable.

5. Immoveable property, which in this world gives fixity of position, should never be partitioned or sold, except in a time of calamity.

6. Of all things the father is called the master. But of the immoveable property, neither the father nor the grandfather is the master (*a*).

7. When the grandfather is living, the father has no power to give away immoveable property; similarly when there is a son, though the grandfather is dead, the father has no power.

8. The father has no power to give or sell self-acquired immoveable property or bipeds, even when the son is in the womb or is an infant in the breast.

9. In that property, infants, born as well as unborn, without understanding or persons dead, all are sharers, as it is their means of support (*b*).

10. When the sons are minors, the mother or the father can, for necessary purposes, make a gift or sale of it.

11. In this world, which is the abode of grief, a son is a giver of rest, without whom the house-holder's condition of men is useless.

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* Hem Chandra was the most learned author among Jainas and is called by them 'the knower of all things in the iron age.'

(*a*) A variant of the text of Narada on the subject.

(*b*) Verses 8 and 9 are variants of the text of Vyasa on the subject.

12. One who has much merit gets many sons who remain together serving their parents.

13. If out of covetousness arises dissension among them, partition should be made according to justice.

14. After the death of the parents, the share of the sons is equal. If any one of the parents be alive, the partition should be at his or her desire.

15. When divided or undivided, all the sons having paid the debts of the parents in equal shares become sharers.

16. If the father gives to the sons unequal shares according to Dharma, it is valid ; if contrary to Dharma, his disposition is unvalid (*a*).

17-18. When the father is too impatient, too old, adulterous, addicted to gambling and other vices, incurably diseased, insane, angry or partial, he is not entitled to partition, being devoid of Dharma.

19. Having performed the necessary ceremonies of the children (sons and daughters of the father) whose ceremonies had not been performed (from the paternal wealth), the sons should divide among themselves the remainder (*b*).

20. When the younger brothers are incapable, or with their consent, the eldest takes the entire paternal wealth and support them.

21. The eldest supports the younger brothers whether divided or undivided, like the father, and they too serve him like a father.

22. By the first born son, a sonless man becomes one with a son. Therefore he should not be given away to another, for he is the head of the family (*c*).

23. The eldest alone may take the paternal estate, the others shall live under him just as they lived under the father (*d*).

24. If after the death of the father, there are one or more unmarried daughters (of his), their marriages should be performed, by the brothers by giving one-fourth from their own shares (*e*).

25. The married daughter never has any share. What the father might have given her out of affection, becomes her property.

26. The father should give to his own wives a share equal to that of each of the sons (*f*).

27. When there is partition after the death of the

(*a*) Verses 14, 15 and 16 are paraphrases of Yajnavalkya's texts on the subject.
(*b*) See Yajnavalkya II. 124.
(*c*) See Manu 9 V. 106.
(*d*) Nearly identical with Manu 9 V 105.
(*e*) See Yajnavalkya II. 124.
(*f*) See Yajnavalkya II. 123.

father, the mother should be given a half share by the sons for carrying on ordinary purposes of the world. When she dies, the sons take her share equally (*a*).

28. When there are two twin sons, the son who is first born has the right of the eldest according to the law of the Jinas.

29. When the daughter is born first and son afterwards. The right of the eldest belongs to the son and never to the daughter.

30. If a person dies leaving one daughter and no other children, the daughter and her son become masters of the estate.

31. The self is born as the son. The daughter is equal to the son; when the self exists, how should another take the wealth? (*b*).

32. The married daughter takes the wealth of the mother. Therefore the daughter's son takes the estate of her father.

33. There is no difference between the son's son and daughter's son. There is connection between the bodies of both with the bodies of their parents (*c*).

34. When a married daughter dies without issue, all her wealth is taken by her husband

35. A son born after partition takes the share of his father (and) does not get his share from the other separated brothers (*d*).

36. If a brother is born subsequent to partition after the death of the father, he takes a share of the estate after allowing for income and expenditure (*e*).

37-38. If a Brahmin has wives of four castes, his wealth should be divided into ten parts and the sons of Brahman, Kshatriya, and Vaisya wives should be given four, three and two parts respectively by the father. The remaining one part should be devoted for religious purposes. The son of the Sudra wife is not entitled to a share excepting food and raiment (*f*).

39. The son of a Kshatriya by a Kshatriya wife gets half and the son by a Vaisya wife gets one-fourth. His son by a Sudra wife gets only food and raiment.

40. The son of a Vaisya by a wife of the same caste, gets the entire estate. His son by a Sudra wife is no heir but gets only food and raiment.

41-42. Of the three superior castes, if there be Sudra sons by slave girls, whatever is given to them by their fathers during their lifetime, of a certainty belongs to them. When

(*a*) The Commentator here adds, 'on failure of daughters and daughter's sons.'

(*b*) Nearly identical with Manu IX. 130.

(*c*) See Manu V. 131.

(*d*) See Manu IX. 216

(*e*) See Yajnavalkya II. 122.

(*f*) See Yajnavalkya II. 125.

the fathers die, they should be supported and settlement made for them, so that they may remember their fathers.

43. The wife of a Sudra is a Sudra woman and no other. The sons born of her become equal sharers of their father's estate.

44. The son of a Sudra by a slave girl takes a share at the desire of the father. On the death of the father, he becomes entitled to a share half of that of each of the brothers by the married wife (*a*).

45-46. A person diseased without hope of life, having a son or not, but having a wife, for the preservation of his estate may appoint a manager, who is of good birth and rich, by giving him the appointment in writing bearing the permission of the king and attestation by witnesses. If the manager, on the death of the owner, enjoys himself or wastes the wealth placed in his charge by the owner, or becomes antagonistic to the widow of the deceased, then the widow should dismiss such an ungrateful proud man with the permission of the King and should carry on work according to the practice of the family with another person trusted by her.

50-51 The manager should preserve the property in his charge with great care, so that there may be support of the family by his cleverness. When there is a legitimate son or a well-behaved adopted son or when there are none, he may for necessary purposes, make a gift, mortgage or sale (of the property in his charge.)

52. When the husband is dead or lost or becomes distracted in mind or a religious ascetic, the wife becomes mistress* of all his wealth.

53. Able to support the family, the eldest wife, whether there be a son or son, is mistress of the wealth like her husband.

54, 55, 56. The widow having no male issue, should establish as master of his husband's estate, in the presence of five witnesses, after having taken him by the rules of adoption, the brother's son (of the husband), in his default the son of a member of the family, whether his initiatory ceremonies have been performed or not, in his default the son of the daughter, in his default the son of a Bandhu, in his default, a boy of the same Gotra, in his default, the younger brother of the husband seven years old.

57. If the adopted son serves the adopted parents with affection, is humble and respectful, he becomes like the legitimate son.

58, 59. 60, 61, 62, 63. If a childless man or woman takes an adopted son, (he or she should) get a deed executed

(*a*) Similar to Yajnavalkya II 133

* Mistress here apparently means manageress.

by his mother, father and the like attested by his relations and properly stamped with the seal of the King ; and should invite the relatives and Agnates with respect ; and should, with songs by women having husbands living and music and other benedictory ceremonies, go to the temple of the Jina and make before the Jina the Swastika and make presents according to ability to the good Guru, and having bowed and having made good gifts in charity should return to his own house ; having thus returned, should give to all persons betels and Bel fruits and the like and should honour sisters and the like by giving them clothes and ornaments and then should cause the birth ceremony of the adopted son to be performed by the invited Guru. Thereupon people say that this boy is born as son to him (the adopter).

64. Thereupon (the adopted son) becomes entitled to perform (as of right) all works about the shop, the land, the house, the village and the like.

65. If a legitimate son by a wife of the same caste be born subsequently, the adopted son becomes entitled to a fourth share. The sons by wives of different castes become entitled to food and raiment (*a*).

66. On a legitimate son being born after a son had been taken in adoption, he alone is entitled to the headdress (*i.e.* headship of the family) and not the adopted son.

67. The adopted son should be given a fourth share and separated. If after the ceremony of fastening the head-dress had been performed, a son is born, he becomes entitled to equal share.

68. The legitimate son and the adopted son are the two principal sons, the son purchased, the younger brother and the daughter's son are subsidiary : these are the five kinds of sons allowed by the Shastras of the Jinas.

69, 70. The son born of the married wife is called Aurasa ; the son given by his parents (in adoption) out of affection, if born of a kinsman is Dattaka. A son purchased is called Krita, the younger brother is Sodara. The son of the daughter is Sauta. These sons are declared heirs.

71, 72. The son of the twice married woman, the son of the maiden, the son secretly born, the son by Niyoga, the son made (Kritrima), the son cast off, the son self-given, the son received with the wife ; these are no heirs under the Jaina Law ; and have been considered as sons in the Shastras of other religious sects for selfish purposes.

73, 74. The heirs (of a deceased person) are in order, the widow, the son, the brother's sons, a Sapinda, the son of a daughter, the son of a Bandhu and a Gotraja. Failing (these), the Agnates and failing them the King should (take

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(*a*) A variant of Katyayana's text on the subject. See Vol. I Ch. V. Sec. I.

the wealth) and by spending it for religious purposes make it of good effect.

75 If the widow is perverse, and of evil conduct, she should be expelled by the husband's brothers and their sons, after making settlement for her maintenance.

76. Childless females of good conduct and chaste should be supported but those that are perverse, of evil conduct and unchaste should be expelled (*a*).

77, 78, 79. A widow possessed by evil spirits, having malignant diseases, who has got paralysis, who is dumb, blind or talks indistinctly, arrogant or void of memory and thus not able to protect the estate or the family, should be supported by his husband's brothers, brother's sons, the Sapindas, the Bandhus, Gotrajas and Agnates and her wealth should be protected by them with care.

80, 81. What has been given to a daughter or what was received by her from her husband's family, should not be taken by any one born of her father's family. But if there is no protector, he should protect her and her wealth and on her death should spend it for religious purposes.

82, 83 The legitimate son and sons adopted and the like, engaged in the acquisition of learning, devoted to the mother, docile, truthful and having control over his senses, should when able (and of age) perform works according to the custom of the family but should do no important special work against the order of his mother.

84. When there are both father and mother, the son is not able to make a gift or sale of paternal property.

85, 86, 87. If the son on account of evil actions is opposed to his parents, and does act against the customs of the family or is addicted to vices and being advised with good counsel does not forsake his evil ways, then having described his conduct to the kinsmen and to the King, with their permission, he should be expelled from the house. His complaint would not be fit to be entertained anywhere.

88. And another son born of good family should be established. A son can be taken in all castes for good name.

89. If one of an undivided family adopts the life of an ascetic, his estate should be taken by his wife.

90. If a person without a son or wife dies or becomes an ascetic, all his brothers and their sons should take his wealth in equal shares.

91, 92. One insane, (incurably) diseased, lame, impotent, blind, outcaste, imbecile, having leprosy of the virulent kind, inimical to the father, in a dying condition, deaf, dumb, inimical to the mother, having excessive anger, and one devoid of an organ of sense, all these are not entitled to shares on

(*a*) A variant of Yajnavalkya II. 142.

account of disqualification and should only be supported by their brothers.

93. If these persons have sons or wives, who are free from defect, they should get his share. If these persons however, are cured of their defects, their right to their shares revives.

94 An adopted son even, if married, if he becomes antagonistic to his parents, should be expelled with the permission of the king, in the presence of witnesses.

95. No one can give away grandpaternal property without the consentof the wife, sons and brothers (*a*).

96. In grandpaternal property, whether moveable, settled property or land, the right of the father and son is common (*b*).

97. All the wives (of a person) are mothers of son if a son is born of one of them. (Therefore) if a step-mother dies without a son, the step-son takes her wealth (*c*).

98. In the estate of the grandfather, the shares of the grandsons is according to the number of the fathers (sons of the grandfather). And in their own father's property their shares are calculated (equally) in accordance with their own numbers (*d*).

99. If among many brothers, one gets a son, by him all the others are possessors of male issue (*e*).

100. A widow is not entitled to spend undivided ancestral wealth of the father-in-law, for her her own purposes without the consent of her son.

101. If separate, she may spend in religious works as she likes. The widow of her deceased son cannot make such expenditure but she can only take as much as is required for maintenance.

102. Though the son may have authority to use all the property, he has nevertheless no power to spend without the mother's consent.

103-105. When the son is dead, his widow takes her husband's estate, if she is of good conduct and obedient to the mother-in-law, able to support the family always devoted to her own religion, kind to all and chaste ; she asks her mother-in-law for (an adopted) son with humility.

106. She never has power to spend the (husband's) wealth of her own will without taking the permission of her mother-in-law.

107. Though every one has power to spend divided wealth, a widowed daughter-in-law has no right to the

(*a*) Similar to Yajnavalkya II. 120.
(*b*) Similar to Yajnavalkya II. 121.
(*c*) Similar to Manu 9 V. 183.
(*d*) Similar to Yajnavalkya II. 120.
(*e*) Avariant of Manu 9 V. 182.

property left by the father-in-law, when the mother-in-law is alive, beyond the right to food and raiment.

108. She should always do all works like taking in adoption in accordance with the desire of her mother-in-law, for the mother-in-law is equal to the mother.

109. A widowed daughter-in-law should take a son in adoption like her husband The mother-in-law has no right to establish (an adopted son) in the place of her own husband *

110. A widow has no power to receive property acquired by her deceased husband, which may be in the hands of her mother-in-law and father-in-law. She is mistress of all property given to her by her husband.

111. When the son dies sonless, his estate is taken by his widow ; when she dies, it is taken by her mother-in-law.

112, 113. Husband's property moveable and immoveable the daughter-in-law has power to spend in processions and establishment of gods and the like religious works and in affectionate gifts to kindred, if being praiseworthy, she is modest and loved by the kindred and not otherwise.

114, 115. On the husband dying sonless, the widow is mistress of all his property.

If she out of affection for her own daughter does not adopt a son and dies without (preferential) heirs like the son of the husband's elder brothers and others, her daughter becomes mistress of the entire estate.

116. If she dies, her husband (takes the estate) ; when he dies. her sons and the like take. The members of her father's family have no right.

117. The son-in-law, the sister's son and the mother-in-law are never heirs because they are of different Gotra.

118. If one brother conceals any commou property, he becomes unworthy of a share and further liable to punishment by the King (*a*).

119. Brothers addicted to seven (grievous) vices are not entitled to shares, because they are fit to be punished by the good on account of having fallen from Dharma.

120, 121. Having taken a son in adoption and having given him the right to property in her husband's estate, if (the widow) is living devoted to the works of her own religion, and the said adopted son dies unmarried in course of time, she has no power to establish another adopted son in his place.

122. She should spend the property by giving it to the son-in-law, the sister's son or the daughter or in feeding the agnates or in other religious works, as she likes.

123. She can establish an (adopted son) in the place of her husband but there is no ordinance in the Jaina Law

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* Refers to the case when the son dies after the father.

(*a*) Similar to Manu 9 V 213.

by which she can establish a son in the place of her (deceased) son.

124. The widow when separated can spend as she likes and no other heir can prohibit her from doing so.

125. When she is undivided, and has no son, she can make a gift, mortgage or sale of the property for necessary purposes.

126. When having betrothed a maiden daughter by word of mouth, out of covetousness, one takes her away from the bridegroom to whom she had been betrothed and marries her to another, he should be punished by the King and should return to the said bridegroom all he might have spent (*a*).

127. If a (betrothed) daughter dies (before marriage), the wealth given to her after deducting all expenses should be returned (to the bridegroom). (*b*) What had been given to her by the mother's father and the like should be taken by her uterine brothers (*c*).

128. How is a doubt raised as to partition to be removed ? It should be determined by deeds, relations and witnesses and other separate actions (*d*).

129. When there is no partition, the transactions of brothers are joint. If one separates, the separation of all arises.

130. The widow of a brother should be respected like the brother by good kinsmen and at her desire an adopted son to him should be established in the place of the deceased brother.

131. Whatever has been given to a co-parcener by his parents such as his wife's ornaments and the like belongs to him exclusively (*e*).

132-134. Whatever is acquired by a co-parcener without detriment to the father's property, and without the help of the other brothers, whatever ancestral property, which had been lost and not recovered by the father, is recovered by (a co-parcener), whatever is acquired by learning or received from friends or at marriage, or acquired by valour or service, all that belongs to him (the acquirer). In that none of the other brothers can be sharers (*f*).

135, 136. Whatever ornaments, clothes, vessels and the like are given to a woman, at the time of marriage or subsequently by father, mother, kinsmen, father's brothers, elder sister, father's sister or others, or by mother's sister and the like or by the husband : all these are her Stridhana (*g*).

(*a*) Avariant of Yajnavalkya II 146.
(*b*) Avariant of Yajnavalkya II 147.
(*c*) Similar to the text of Bandhayana cited in Vol. I, Ch. 3, Sec. 4.
(*d*) Avariant of Yajnavalkya II 149.
(*e*) Avariant of Yajnavalkya II. 123.
(*f*) Avariant of Yajnavalkya II 118-119.
(*g*) Very nearly identical with the texts of Katyayana on Stridhana. See Vol. I, Ch. 3, Sec. 4.

137. Whatever wealth, ornaments and the like are given to a woman by her parents at the time of marriage witnessed by Brahmin and fire, become Adhagnikrit (Stridhana) (*a*).

138. Again, whatever ornaments and the like are given when a bride is being carried from her father's house, in the presence of brothers and kinsmen are called Adhvabahanika (*b*).

139. Whatever is given to the daughter-in-law out of affection by the father-in-law or mother-in-law, for seeing her face or for her bowing by touching the feet is called 'gains of amiability' (*c*).

140. Again whatever gold, gems and the like are received from a brother or from the father's house by a married woman is her Saudayika wealth (*d*).

141. Whatever gems, silk clothes and the like are given by a married couple or women of good family at the time of taking the bride round the bridegroom is called Anvadheya.

142. All these kinds of Stridhana no co-parcener has power to take, because they are declared as not liable to partition by all persons conversant with the law.

143. Whatever ornament had been given to a woman by her husband for wearing, cannot be taken by any co-parcener on the husband's death; because it becomes Stridhana (*e*).

144. A husband is not liable to make good the property of his wife taken by him while having no other means, in illness, for religious purposes, in famine, in distress or while under restraint (*f*).

145. There is diversity (in rules of law) on account of differences in customs of countries and the like. Whatever custom that is considered as preeminent in a country is of force there (*g*).

146. Thus has the law of partition of heritage been described concisely, as has been heard. More particular rules should be known from Niti Shastras of the Ahrat (Vrihat Ahranniti).

End of the chapter on partition of heritage in the Laghu Ahranniti Shastra written by Acharya Hemchandra and respectfully heard by the great Ahrat, King Kumara Pala the ornament of the family of Chaulukya.

(*a*) (*b*) (*c*) (*d*) are very nearly identical with the texts of Katyayana on Stridhana. See Vol. I, Ch. 3, Sec. 4.

(*e*) Nearly identical with Manu 9 V. 200.

(*f*) Nearly identical with Yajnavalkya II. 147.

(*g*) See Yajnavalkya IV 343.

अर्हन्नीतिः

कलिकालसर्व्वज्ञहेमचन्द्राचार्य्यप्रणीता

अथ दायभागप्रकरणंप्रारभ्यते ।

—:o:—

लक्ष्मणातमर्थं नत्वा द्युसदेन्द्रादिसेवितं ।
गेयामेयगुणाविष्टं दायभागः प्ररूप्यते ॥ १
स्वस्वत्वापादनं दायः स तु द्वैविधमश्नुते ।
आद्यः सप्रतिबंधश्च द्वितीयोऽप्रतिबंधकः ॥ २
दायो भवति द्रव्याणां तद्द्रव्यं द्विविधं स्मृतं ।
स्थावरं जङ्गमं चैव स्थितिमत् स्थावरं मतम् ॥ ३
गृहारामादिवस्तूनि स्थावराणि भवन्ति च ।
जङ्गमं स्वर्णं रौप्यादि यत्प्रयोगेण गच्छति ॥ ४
न विभाज्यं न विक्रेयं स्थावरं च कदापि हि ।
प्रतिष्ठाजनकं लोके आपदाकालमन्तरा ॥ ५
सर्वेषां द्रव्यजातानां पिता स्वामी निगद्यते ।
स्थावरस्य तु सर्वस्य न पिता न पितामहः ॥ ६
जीवत्पितामहे तातो दातुं नो स्थावरं क्षमः ।
तथा पुत्रस्य सद्भावे पितामहमृतावपि ॥ ७
पितास्वीयार्जितं द्रव्यं स्थावरं द्विपदं तथा ।
दातुं शक्तो न विक्रेतुं गर्भस्थेऽपि स्तनंधये ॥ ८
बाला जातास्तथाजाता अज्ञानाश्चशवा अपि ।
सर्वे स्वजीविकार्थं हि तस्मिन्नंशहराः स्मृताः ॥ ९
अप्राप्तव्यवहारेषु तेषु माता पितापि वा ।
कार्यैत्वावश्यकै कुर्यात्तस्य दानं च विक्रयम् ॥ १०
दुःखागारे हि संसारे पुत्रो विश्रामदायकः ।
यस्मादृते मनुष्याणां गार्हस्थ्यं च निरर्थकम् ॥ ११

यस्य पुण्यं बलिष्ठं स्यात्तस्य पुत्रा अनेकशः ।
संभूयैकत्र तिष्ठंति पित्रोः सेवासु तत्पराः ॥ १२
लोभादिकारणाज्जाते कलौ तेषां परस्परं ।
न्यायानुसारिभिः कार्या दायभागविचारणा ॥ १३
पित्रोरूर्ध्वं तु पुत्राणां भागः सम उदाहृतः ।
तयोरन्यतमे नूनं भवेद्भागस्तदिच्छया ॥ १४
विभक्ता अविभक्ता वा सर्व्वे पुत्राः समांशतः ।
पित्रोॠणं प्रदत्वैव भवेयुर्भागभागिनः ॥ १५
धर्मतश्चेत् पिता कुर्यात्पुत्रान् विषमभागिनः ।
प्रमाणं वैपरीत्ये तु तत्कृतस्याप्रमाणता ॥ १६
व्यग्रचित्तोऽतिवृद्धश्च व्यभिचाररतस्तु यः ।
द्यूतादिव्यसनासक्तो महारोगसमन्वितः ॥ १७
उन्मत्तश्च तथा क्रुद्धः पक्षपातयुतः पिता ।
नाधिकारी भवेद्भागकरणे धर्मवर्जितः ॥ १८
असंस्कृतान्यपत्यानि संस्कृत्य भ्रातरः स्वयम् ।
अवशिष्टं धनं सर्वं विभजेयुः परस्परम् ॥ १९
अनुजानां लघुत्वेऽनुमतौ चाप्यग्रजो धनं ।
सर्वं गृह्णाति तत्पैत्र्यं तदा तान् पालयेत् सदा ॥ २०
विभक्तानविभक्तान् वै भ्रातॄन् ज्येष्ठःपितेव सः ।
पालयेत्तेऽपि तं ज्येष्ठं सेवन्ते पितरं यथा ॥ २१
पूर्वजेन तु पुत्रेण अपुत्री पुत्रवान्भवेत् ।
ततो न देयः सोऽन्यस्मै कुटुम्बाधिपतिर्यतः ॥ २२
ज्येष्ठ एव हिं गृह्णीयात्पैत्र्यं धनमशेषतः ।
शेषास्तदनुसारित्वं भजेयुः पितरं यथा ॥ २३
एकानेका च चेत्कन्या पित्रोरूर्ध्वं स्थिता तदा ।
स्वांशात्पुत्रैस्तुरीयांशं दत्वावश्यं विवाह्यते ॥ २४
विवाहिता च या कन्या तस्या भागो न कर्हिचित् ।
पित्रा प्रीत्या च यद्दत्तं तदेवास्या धनं भवेत् ॥ २५
यावतांशेन तनया विभक्ता जनकेन तु ।
तावतैव विभागेन युक्ताः कार्या निजस्त्रियः ॥ २६

पितुरूर्ध्वं निजांबाया: पुत्रैर्भागश्च साधक: ।
लौकिकव्यवहारार्थं तन्मतौ ते समांशिन: ॥ २७
पुत्रयुग्मे समुत्पन्ने यस्य प्रथमनिर्गम: ।
तस्यैव ज्येष्ठता ज्ञेया इत्युक्तं जिनशासने ॥ २८
दुहिता पूर्वमुत्पन्ना सुत: पश्चाद्भवेद्यदि ।
पुत्रस्य ज्येष्ठता तत्र कन्यायां न कदाचन ॥ २९
यस्यैकायां तु कन्यायां जातायां नान्यसन्ततिः ।
प्राप्तं तस्याधिपत्यं तु सुतायास्तत्सुतस्य च ॥ ३०
आत्मा वै जायते पुत्र: पुत्रेण दुहिता समा ।
तस्यामात्मनि तिष्ठन्त्यां कथमन्यो धनं हरेत् ॥ ३१
गृह्णाति जननीद्रव्यमूढा च यदि कन्यका ।
पितृद्रव्यमशेषं हि दौहित्र: सुतरां हरेत् ॥ ३२
पौत्रदौहित्रयोर्मध्ये भेदोऽस्ति न हि कश्चन ।
तयोर्देहे हि सम्बन्ध: पित्रोर्देहस्य सर्वथा ॥ ३३
विवाहिता च या कन्या चेन्मृतापत्यवर्जिता ।
तदा तद्दृत्तजातस्याधिपतिस्तत्पतिर्भवेत् ॥ ३४
विभागोत्तरजातस्तु पुत्र: पित्रंशभाग् भवेत् ।
नापरेभ्यस्तु भ्रातृभ्यो विभक्तेभ्योंऽशमाप्नुयात् ॥ ३५
पितुरूर्ध्वं विभक्तेषु पुत्रेषु यदि सोदर: ।
जायते तद्विभाग: स्यादायव्ययविशोधितात् ॥ ३६
ब्राह्मणस्य चतुर्वर्णा: स्त्रिय: सन्ति तदा वसु ।
विभज्य दशधा तस्मान् चतुस्त्रिद्व्यंशभागिन: ॥ ३७
कुर्यात्पितावशिष्टं तु भागं धर्मे नियोजयेत् ।
शूद्राजातो न भागार्हो भोजनांशुकमन्तरा ॥ ३८
क्षत्राज्जात: सवर्णायामर्धभागी विशात्मजा ।
जातस्तुर्यांशभागी स्याच्छूद्रीतनयोऽन्नवस्त्रभाक् ॥ ३९
वैश्याज्जात: सवर्णायां पुत्र: सर्वपतिर्भवेत् ।
शूद्राजातो न दायादो योग्यो भोजनवाससां ॥ ४०
वर्णत्रये यदा दासीवर्गशूद्रात्मजो भवेत् ।
जीवत्तातेन यत्तस्मै दत्तं तत्तस्य निश्चितम् ॥ ४१

मृते पितरि तत्पुत्रैः कार्यं तेषां हि पालनम् ।
निबन्धश्च तथा कार्यस्तातं येन स्मरन्ति हि ॥ ४२

शूद्रस्य स्त्री भवेच्छूद्री नान्या तज्जातसूनवः ।
यावन्तस्तेऽखिला नूनं भवेयुः समभागिनः ॥ ४३

दास्यां जातोऽपि शूद्रेण भागभाक् पितुरिच्छया ।
मृते तातेऽर्धभागी स्यादूढाजाभ्रातृभागतः ॥ ४४

जीवनाशाविनिर्मुक्तः पुत्रयुक्तोऽथवापरः ।
सपत्नीकः स्वरक्षार्थमधिकारिपदे नरम् ॥ ४५

दत्वा लेख्यं स्वनामाङ्कं राजाज्ञासाक्षिसंयुतं ।
कुलीनं धनिनं मान्यं स्थापयेत्स्त्रीमनोनुगम् ॥ ४६

प्राप्याधिकारं पुरुषः परासौ गृहनायकि ।
स्वामिना स्थापितं द्रव्यं भक्षयेद्वा विनाशयेत् ॥ ४७

भवेच्चेत्प्रतिकूलश्च मृतवध्वाः कथञ्चन ।
तदा सा विधवा सद्यः कृतघ्नं तं मदाकुलं ॥ ४८

भूपाज्ञापूर्व्वकं कृत्वा स्वाधिकारपदच्युतं ।
नरैरन्यैः स्वविश्वस्तैः कुलरीतिं प्रचालयेत् ॥ ४९

तद्द्रव्यमतियत्नेन रक्षणीयं तया सदा ।
कुटुम्बस्य च निर्वाहस्तन्मिषेण भवेद्यथा ॥ ५०

सत्यौरसे तथा दत्ते सुविनीतेऽथवासति ।
कार्ये सावश्यके प्राप्ते कुर्याद्दानाधिविक्रयम् ॥ ५१

भ्रष्टे नष्टे च विक्षिप्ते पत्यौ प्रव्रजिते मृते ।
तस्य निःशेषवित्तस्याधिपा स्याद्दरवर्णिनी ॥ ५२

कुटुम्बपालने शक्ता ज्येष्ठा या च कुलाङ्गना ।
पुत्रस्य सत्त्वेऽसत्त्वे च भर्तृवत्साधिकारिणी ॥ ५३

भ्रातृव्यं तदभावे तु स्वकुटुम्बात्मजं तथा ।
असंस्कृतं संस्कृतं च तदसत्त्वे सुतासुतम् ॥ ५४

बन्धुजं तदभावे तु तस्मिन्नसति गोत्रजं ।
तस्यासत्वे लघुं सप्तवर्षसंस्थं च देवरम् ॥ ५५

विधवा स्वौरसाभावे गृहीत्वा दत्तरीतितः ।
अधिकारपदे भर्तुः स्थापयेत्पञ्चसाक्षितः ॥ ५६

यदि स दत्तकः पित्रोः प्रीत्या सेवासु तत्परः ।
विनयी भक्तिनिष्ठश्च भवेदौरसवत्तदा ॥ ५७
अप्रजा मनुजः स्त्री वा गृह्णीयाद्यदि दत्तकं ।
तदा तन्मातृपित्रादेर्लेख्यं वंश्यादिसाक्षियुक् ॥ ५८
राजमुद्रांकितं सम्यक्कारयित्वा कुटुम्बजान् ।
ततो ज्ञातिजनांश्चैवाहूय भक्तिसमन्वितः ॥ ५९
सधवागीततूर्यादिमङ्गलाचारपूर्वकम ।
गत्वा जिनालये कृत्वा जिनाग्रे स्वस्तिकं पुनः ॥ ६०
प्राभृतं च यथाशक्ति विधाय सुगुरुं तथा ।
नत्वा दत्त्वा च सद्दानं व्यावृत्य निजमन्दिरं ॥ ६१
आगत्य सर्व्वलोकेभ्यस्तांबूलश्रीफलादिकम् ।
दत्वा सत्कार्य्य स्वसादीन् वस्त्रालङ्करणादिभिः ॥ ६२
आहूतगणकाद्युक्त्या कारयेज्जातकर्म सः ।
ततो जातोऽस्य पुत्रोऽयमिति लोकैर्निगद्यते ॥ ६३
तदैवापत्यभूवास्तुग्रामप्रभृतिकर्मसु ।
अधिकारमवाप्नोति राज्यकार्येष्वयं पुनः ॥ ६४
सवर्णास्त्यौरसोत्पत्तौ तुर्यांशार्हो भवत्यपि ।
भोजनांशुकदानार्हा असवर्णा समन्वयाः ॥ ६५
गृहीते दत्तके जात औरसस्तर्हि बन्धनं ।
उष्णीषस्य भवेत्तस्य न हि दत्तस्य सर्वथा ॥ ६६
तुर्यांशं प्रदाप्यैव दत्तः कार्यः पृथक् तदा ।
पूर्वमेवोष्णीषबन्धे यो जातः स समांशभाक् ॥ ६७
औरसो दत्रिमश्चेति मुख्यौ क्रीतः सहोदरः ।
दौहित्रश्चेति गौणास्तु पञ्चपुत्रा जिनागमे ॥ ६८

अथ तल्लक्षणम् ।

धर्मपत्न्यां समुत्पन्न औरसो दत्तकस्तु सः ।
यो दत्तो मातृपितृभ्यां प्रीत्या यदि कुटुम्बजः ॥ ६९
क्रयक्रीतो भवेत्क्रीतः लघुभ्राता च सोदरः ।
सौतः सुतोद्भवश्चेमे पुत्रा दायहराः स्मृताः ॥ ७०

पौनर्भवश्च कानीनः प्रच्छन्नः क्षेत्रजस्तथा ।
कृत्रिमश्चापविद्धश्च दत्तश्चैव सहोढजः ॥ ७१
अष्टावमी पुत्रकल्पा जैने दायहरा न हि ।
तीर्थान्तरीयशास्त्रे च कल्पिताः स्वार्थसिद्धये ॥ ७२
पत्नी पुत्रश्च भ्रातृव्याः सपिण्डश्च दुहितृजः ।
बन्धुजो गोत्रजश्च स्वस्वामी स्यादुत्तरोत्तरम् ॥ ७३
तदभावे च ज्ञातियैस्तदभावे महीभुजा ।
तद्धनं सफलं कार्यं धर्ममार्गे प्रदाय च ॥ ७४
प्रतिकूला कुशीला च निर्वास्या विधवापि सा ।
ज्येष्ठदेवरतत्पुत्रैः कृत्वान्नादिनिबन्धनम् ॥ ७५
सुशीलाप्रजसः पोष्या योषितः साधुवृत्तयः ।
प्रतिकूला च निर्वास्या दुःशीला व्यभिचारिणी ॥ ७६
भूतावेशादिविक्षिप्तात्युग्रव्याधिसमन्विता ।
वातादिदूषिताङ्गा च मूकान्धास्पष्टभाषिणी ॥ ७७
मदान्धा धृतिहीना च धनं स्वीयं कुटुम्बकं ।
त्रातुं न हि समर्था या सा पोष्या ज्येष्ठदेवरैः ॥ ७८
भ्रातृजैश्च सपिण्डैश्च बन्धुभिर्गोत्रजैस्तथा ।
ज्ञातिजैरक्षणीयं तद्धनं चातिप्रयत्नतः ॥ ७९
यच्च दत्तं स्वकन्यायै यच्चामातृकुलागतम् ।
तद्धनं न हि गृह्णीयात् कोपि पितृकुलोद्भवः ॥ ८०
किन्तु त्राता न कोऽपिस्यात्तदा तां तद्धनं तथा ।
रक्षेत्तस्या मृतौ तच्च धर्ममार्गे नियोजयेत् ॥ ८१
आत्मजो दत्रिमादिश्च विद्याभ्यासैकतत्परः ।
मातृभक्तियुतः शान्तः सत्यवक्ता जितेन्द्रियः ॥ ८२
समर्थो व्यसनापेतः कुर्याद्रीतिं कुलागतां ।
कर्तुं शक्तो विशेषं नो मातुराज्ञां विमुच्य वै ॥ ८३
पितुर्मातुर्द्वयोःसत्त्वे पुत्रैः कर्तुं न शक्यते ।
पित्रादिवस्तुजातानां सर्वथा दानविक्रये ॥ ८४
पितृभ्यां प्रतिकूलःस्यात्पुत्रो दुष्कर्मयोगतः ।
ज्ञातिधर्माचारभ्रष्टोऽथवा व्यसनतत्परः ॥ ८५

सम्बोधितोऽपि सद्वाक्यैर्न त्यजेद्दुर्मतिं यदि ।
तदा तद्वृत्तमाख्याय ज्ञातिराज्याधिकारिणः ॥ ८६
तदीयाज्ञां गृहीत्वा च सर्वैः कार्यो गृहाद्बहिः ।
तस्याभियोगः कुत्रापि श्रोतुं योग्य न कर्हिचित् ॥ ८७
पुत्रीकृत्य स्थापनीयोऽन्यो डिम्भः सुकुलोद्भवः ।
विधीयते सुखार्थं हि चतुर्वर्णेषु सन्ततिः ॥ ८८
परिव्रज्यागृहीतैकेनाविभक्तेषु बन्धुषु ।
विभागकाले तद्भागं तत्पत्नी लातुमर्हति ॥ ८९
पुत्रस्त्रीवर्जितः कोऽपि मृतः प्रव्रजितोऽथवा ।
सर्वं तद्भ्रातरस्तज्ज्ञा गृह्णीयुस्तद्धनं समम् ॥ ९०
उन्मत्तो व्याधितः पङ्गुः षण्ढोऽन्धः पतितो जडः ।
नष्टाङ्गः पितृविद्वेषी मुमूर्षुर्बधिरस्तथा ॥ ९१
मूकश्च मातृविद्वेषी महाक्रोधी निरिन्द्रियः ।
दोषत्वेन न भागार्हाः पोषणीयाः स्वभ्रातृभिः ॥ ९२
एषां तु पुत्रपत्न्यश्चेच्छुद्धा भागमवाप्नुयुः ।
दोषस्यापगमे त्वेषां भागार्हत्वं प्रजायते ॥ ९३
विवाहितोपि चेद्वृत्तः पितृभ्यां प्रतिकूलभाक् ।
भूपाज्ञापूर्वकं सद्यो निःसार्यो जनसाक्षितः ॥ ९४
पैतामहं वस्तुजातं दातुं शक्तो न कोऽपि हि ।
अनापृच्छ्य निजां पत्नीं पुत्रान् भ्रातृगणं च वै ॥ ९५
पितामहार्जिते द्रव्ये निबन्धे च तथा भुवि ।
पितुः पुत्रस्य स्वामित्वं श्रुतं साधारणं यतः ॥ ९६
जातेनैकेन पुत्रेण पुत्रवत्योऽखिलाः स्त्रियः ।
अन्यतरस्या अपुत्राया मृतौ स तद्धनं हरेत् ॥ ९७
पैतामहे च पौत्राणां भागाः स्युः पितृसंख्यया ।
पितुर्द्रव्यस्य तेषां तु संख्यया भागकल्पना ॥ ९८
पुत्रस्त्वेकस्य संजातः सोदरेषु च भूरिषु ।
तदा तेनैव पुत्रेण ते सर्वे पुत्रिणः स्मृताः ॥ ९९
अविभक्तं क्रमायातं श्वशुरस्वं न हि प्रभुः ।
कृत्ये निजे व्ययीकर्तुं सुतसम्मतिमन्तरा ॥ १००

विभक्ते तु व्ययं कुर्याद् धर्मादिषु यथारुचि ।
तत्पत्न्यपि मृते तस्य कर्तुं शक्ता न तद्व्ययम् ॥ १०१

निर्वाहमात्रं गृह्णीयात् तद्द्रव्यस्य च भिषतः ।
प्राप्नोऽधिकारं सर्वत्र द्रव्ये व्यवहृतौ सुतः ॥ १०२

तथापीशो व्ययं कर्तुं न ह्यम्बानुमतिं विना ।
सुते परासौ तत्पत्नी भर्तृधनहरी स्मृता ॥ १०३

यदि सा शुभशीला स्त्री श्वश्रूनिर्देशकारिणी ।
कुटुम्बपालने शक्ता स्वधर्मनिरता सदा ॥ १०४

सानुकूला च सर्वेषां भर्तृमैत्रकसेविका ।
श्वश्रूं याचेत पुत्रं हि विनयानतमस्तका ॥ १०५

न हि सापि व्ययं कर्तुं समर्था तद्धनस्य वै ।
निजेच्छया निजां श्वश्रूमनापृच्छ्य च कुत्रचित् ॥ १०६

विभक्तधनव्ययीकरणे तु सर्वेषामधिकारोऽस्त्येवेति ।

श्वशुरस्थापिते द्रव्ये श्वश्रूसत्त्वेऽधवा वधूः ।
नाधिकारमवाप्नोति भुक्त्याच्छादनमन्तरा ॥ १०७

दत्तगृहादिकं सर्वं कार्यं श्वश्रूमतेनुगं ।
करणीयं सदा वध्वा श्वश्रूर्मातृसमा यतः ॥ १०८

गृह्णीयाद्दत्तकं पुत्रं पतिवद्विधवा वधूः ।
न शक्ता स्थापितुं तं च श्वश्रूर्निजपतेः पदे ॥ १०९

स्वभर्त्रोपार्जितं द्रव्यं श्वश्रूश्वशुरहस्तगं ।
विधवासुं न शक्ता तत्स्वामिदत्ताधिपैव हि ॥ ११०

अपुत्रपुत्रमरणे तद्द्रव्यं लाति तद्वधूः ।
तन्मृतौ तस्य द्रव्यस्य श्वश्रूः स्यादधिकारिणी ॥ १११

रमणोपार्जितं वस्तु जङ्गमस्थावरात्मकम् ।
देवयात्राप्रतिष्ठादिधर्मकार्ये च सौहृदे ॥ ११२

श्वश्रूसत्त्वे व्ययीकर्तुं शक्ता चेद्विनयान्विता ।
कुटुम्बस्य प्रिया नारी वर्णनीयान्यथा न हि ॥ ११३

अनपत्ये मृते पत्यौ सर्वस्य स्वामिनी वधूः ।
सापि दत्तमनादाय स्वपुत्रीमेनपाश्रतः ॥ ११४

ज्येष्ठादिपुत्रदायादाभावे पत्नत्वमागता।
चेत्तदा स्वामिनी पुत्री भवेत्सर्वधनस्य च ॥ ११५
तन्मृतौ तद्धवः स्वामी तन्मृतौ तत्सुतादयः।
पितृपक्षीयलोकानां न हि तत्राधिकारिता ॥ ११६
जामाता भागिनेयश्च श्वश्रूश्चैव कथञ्चन।
नैवैतेऽत्र दायादाः परगोत्रत्वभावतः ॥ ११७
साधारणं च यद्‌द्रव्यं तद्भ्राता कोऽपि गोपयेत्।
भागयोग्यः स नास्त्येव प्रत्युतो राज्यदण्डभाक् ॥ ११८
सप्तव्यसनसंसक्ताः सोदरा भागभागिनः।
न भवन्ति यतो दण्ड्या धर्मभ्रंशेन सज्जनैः ॥ ११९
गृहीत्वा दत्तकं पुत्रं स्वाधिकारं प्रदाय च।
तस्मायात्मीयवित्तेषु स्थिता स्वधर्मकर्मणि ॥ १२०
कालचक्रेण सोऽनूढः चेन्मृतो दत्तकस्तदा।
न शक्ता स्थापितुं सा हि तत्पदे चान्यदत्तकम् ॥ १२१
जामातृभागिनेयेभ्यः सुतायै ज्ञातिभोजने।
अन्यस्मिन् धर्मकार्ये वा दद्यात्स्वं स्वं यथारुचि ॥ १२२
युक्तं वै स्थापितुं पुत्रं स्वीयभर्तृपदे तया।
कुमारस्य पदे नैव स्थापनाज्ञा जिनागमे ॥ १२३
विधवा हि विभक्ता चेत् व्ययं कुर्यात् यथेच्छया।
प्रतिषेद्धा न कोऽप्यत्र दायादश्च कथञ्चन ॥ १२४
अविभक्ता सुताभावे कार्ये त्वावश्यकेऽपि वा।
कर्तुं शक्ता स्ववित्तस्य दानमाधिं च विक्रय * ॥ १२५
वाचा कन्यां प्रदत्वा चेत्पुनर्लोभेन तां हरेत्।
स दंड्यो भूभृता दद्याद्वरस्य तद्धनं व्ययि ॥ १२६

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* The following are the verses of the Vrihadarhanniti in Prakrit on the subject.

पइ मरणे तव्भज्जा दव्वस्साहि वा भवणेपूर्ण।
पुत्तस्स य सब्भावे तस्स अहावेवि विसाविसवा ॥
अह सा होइ सुसीला गुणढावस्स रायसरक्खिज्जे।
विक्कय दाणादियं कुज्जा न हु कोवि पडिबंधो ॥

कन्यामृतौ व्ययं शोध्य देयं पश्चाच्च तद्धनं ।
मातामहादिभिर्दत्तं तद्गृह्णन्ति सहोदराः ॥ १२७

निन्हुते कोऽपि चेज्जाते विभागे तस्य निर्णयः ।
लेख्येन बन्धुलोकादिसाक्षिभिर्भिन्नकर्मभिः ॥ १२८

अविभागे तु भ्रातृणां व्यवहार उदाहृतः ।
एक एव विभागे तु सर्वः सजायते पृथक् ॥ १२९

भ्रातर्यद्विधवा मान्या भ्रातृजाया सुबन्धुभिः ।
तदिच्छया सुतस्तस्य स्थाप्यो भ्रातृपदे च तैः ॥ १३०

यत्किंचिद्वस्तुजातं हि स्वरामाभूषणादिकं ।
यस्मै दत्तं पितृभ्यां च तत्तस्यैव सदा भवेत् ॥ १३१

अविनाश्य पितुर्द्रव्यं भ्रातृणामसहायतः ।
हृतं कुलागतं द्रव्यं पित्रा नैव यदुद्धृतम् ॥ १३२

तदुद्धृत्य समानीतं लब्धं विद्याबलेन च ।
प्राप्तं मित्राद्विवाहे वा तथा शौर्येण सेवया ॥ १३३

अर्जितं येन यत्किंचित्तत्तस्यैवाखिलं भवेत् ।
तत्र भागहरा न स्युरन्ये केऽपि च भ्रातरः ॥ १३४

विवाहकाले वा पश्चात् पित्रा मात्रा च बन्धुभिः ।
पितृव्यैश्च बृहच्छ्वश्रा पितृस्वसा तथा परैः ॥ १३५

मातृस्वस्रादिभिर्दत्तं तथैव पतिनापि यत् ।
भूषणांशुकपात्रादि तत्सर्वं स्त्रीधनं भवेत् ॥ १३६

विवाहे यच्च पितृभ्यां धनमाभूषणादिकं ।
विप्राग्निसाक्षिकं दत्तं तदध्यग्निकृतं भवेत् ॥ १३७

पुनः पितृगृहादध्यानीतं यद्भूषणादिकम् ।
बन्धुभ्रातृसमक्षं स्यादध्यावाहनिकं च तत् ॥ १३८

प्रीत्या स्नुषायै यद्दत्तं श्वश्र्वा च श्वशुरेण च ।
मुखेक्षणांघ्रिनमने तद्धनं प्रीतिजं भवेत् ॥ १३९

पुनर्भ्रातुः सकाशाद्यत्प्राप्तं पितृगृहात्तथा ।
ऊढाया स्वर्णरत्नादि तत्स्यात्सौदायिकं धनम् ॥ १४०

परिक्रमणकाले यद्दत्तं रत्नांशुकादिकं ।
जायापतिकुलस्त्रीभिस्तदन्वाधेयमुच्यते ॥ १४१

एतत्स्त्रीधनमादातुं न शक्तः कोऽपि सर्वथा ।
भागानर्हं यतः प्रोक्तं सर्वैर्नीतिविशारदैः ॥ १४२

धारणार्थमलङ्कारो भर्त्रा दत्तो न केनचित् ।
ग्राह्यः पतिमृतौ सोऽपि व्रजेत्स्त्रीधनतां यतः ॥ १४३

व्याधौ धर्मे च दुर्भिक्षे विपत्तौ प्रतिरोधके ।
भर्तानन्यगतिः स्त्रीस्वं लात्वा दातुं न चार्हति ॥ १४४

सम्भवेदत्र वैचित्र्यं देशाचारादिभेदतः ।
यत्र यस्य प्रधानत्वं तत्र सो बलवत्तरः ॥ १४५

इत्येवं वर्णितस्तत्र दायभाग समासतः ।
यथाश्रुतं विशेषश्च ज्ञेयोऽर्हन्नीतिशास्त्रतः ॥ १४६

दायभाग प्रकरणं सम्पूर्णं ॥

SMRITI CHANDRIKA.

BY DEVANNA BHATTA

1200—1300 A. D.

CHAPTER I.

DISQUISITION ON INHERITANCE, OWNERSHIP, POWER AND TIME OF PARTITION &C.

Now are described the rules of the title of the Law called partition of heritage—

1. In that connection says Manu :

The meaning of it is : " understand the Law about partition of property called Daya which is being described by me."

2. If it is asked what is Daya, the (answer is given by) the author of the Nighantoo is : " The wise call the divisible paternal property Daya."

Daya defined.

The ancients call the divisible wealth descending from the father and the like *Daya.* Therefore Dhareswara says : " by the word *Daya* (property) descending from the father and from the mother is described." The particle *Cha* (and) is used to indicate that property derived on account of other relationship is also included in the term. The particle *Eva* is used in the text, (say some) to indicate property the right to which accrues when it is obtained, because property in which there is a present vested right devolves from father to sons and grandsons. It should be understood that the term Daya is applied by the author of the Nighantoo to property derived by reason of relationship with another, which is subject of partition.

3. By the law of Daya is here meant the law of partition, for the law of the duties of man and woman and also of partition have been mentioned by him (Manu) before, in describing the titles of Law. Therefore the Sangrahakara (author of the Digest) says : " By the term Daya is meant wealth derived from the father and also from the mother. Its division is now mentioned." The meaning of the text of the Digest is that by the term Daya which is a part of the compound word Dayadharma is meant wealth derived from father and the like and its partition is now described by Manu after describing the rules of the title of law about the duties of man and woman.

4. If it is asked, how is that described? Manû says: "After the death of the father and of the mother, the brethren, being assembled, may divide among themselves in equal shares, the paternal wealth, for they have no power (over it), while the parents live."

Time of partition.

Of this also the meaning is thus explained by the author of the Digest. "(Of partition), the time, the mode, the persons by whom it is to be made, and of what property, are described according to the Shastras" The meaning of this is: 'The property,' *i.e.*, the property paternal and maternal and the like; the time; the mode, that is, the manner of partition in equal or unequal shares; the persons, *i.e.*, father, brother, sister and the like: in reference to all these, partition is described, without violating the authority of Vriddha Manu and other Shastras, by the text: "After the death of the father, &c."

5. Here in the text 'after the death of the father, &c.', the time for the partition of father's estate is indicated. By the words 'and of the mother' the time for the partition of the mother's estate; therefore even when the mother is alive the paternal estate may be divided; similarly after the death of the mother, even when the father is living, the mother's estate may be divided; because the death of both the parents is not essential for the division of the estate of either of them. To that effect says the Sangrahakara (author of the Digest): "the father's estate may be divided while the mother is living, because the mother has no independent ownership without her husband. Mother's estate may also be divided during the lifetime of her husband, if there are children, because the husband is not the lord of her Stridhana." Because the wife of the father without her husband at his death, has no independent right or ownership; because (also) when there are children, on the death of the wife, the husband is not master of the Stridhana of the wife, therefore the division of the estate of one of them while the other is living, is proper. This is the meaning.

Son's want of right to partition during father's lifetime.

6. By this it is mentioned by implication that while the father is living, the paternal estate, and the maternal estate, while the mother is living, should not be divided by the sons. This is mentioned in the concluding passage of the text of Manu: "They have no power while the parents live." To that effect says Sankha: "Sons have no power to divide the estate when the father lives. Though ownership is afterwards acquired by the sons, they have no such right as they are not independent in respect of wealth and religious rites." Though the sons obtain owner-

ship in the paternal estate after their own birth, still while the father is living, they have no right to partition, because, on account of want of independence in respect of wealth and religious rites, the sons are not entitled to the power to partition. This is the meaning

7. Want of independence as to wealth means want of independent right to receipt and disposal of wealth. So says Harita : "While the father lives, sons are not independent in respect of the receipt, alienation of wealth and of Akshepa or punishment of dependants." 'Receipt means enjoyment of wealth. Alienation means expenditure. Akshepa means chastisement for correction of slaves and other dependent members in case of wrongdoing. Want of independence means want of right to enjoyment, &c., of wealth without father's permission. Want of independence in respect of religion, thus means want of right to separate performance of the Ishta or sacrifices and Purta or charitable works (like digging of tanks). Thus it should be understood that the son can perform the Agnihotra and the like (sacrifices) with the permission of the father and not without it.

8. As regards the text of Devala : "After the death of the father, sons should divide his wealth. As long as the faultless father is alive, they have no right ;" in this, the words 'have no right' are used to signify want of independence, because the right of sons by birth to paternal wealth during the lifetime of the faultless father, is well-established among people. (The objector says),, ownership does not accrue from worldly causes and the son's ownership cannot accrue on account of popular recognition This position is against another text "have no right (while the faultless father is alive)." It cannot be said that ownership for worldly causes is a nominal proposition, because the Sangrahakara sets out the reason of it in the passage : "He in whose hands a thing is may not be its owner for is it not seen that a thing belonging to another obtained by theft and the like is in the hands of a person other than the owner. Therefore ownership arises from the rules of Shastras and not from possession, because it is not possible to determine that the person in whose possession a thing is is its owner, as in that case ownership would accrue to a person in whose possession the property of another is by theft and the like. Therefore ownership accrues from Shastra and not from other reasons. This is the meaning. Again if the person, with whom a thing is, is its owner, then it cannot be said that this man's property is stolen by another, because ownership would be with the person with whom it is. Further more; if ownership accrues from other (than

Ownership defined. How it arises.

Shastraic cause), the following rule laid down in the Gautama Dharma Shastra : "acceptance is for a Brahmana is an additional (mode of acquisition), conquest for a Kshatriya, gain (by labour) for a Vaisya and a Sudra" for regulating acquisition of wealth by persons of different castes, without transgressing the rules for their castes, in different modes, (would be meaningless), because other causes might regulate the matter." These two objections (have been mentioned) by him (the Sangrahakara in the passage) : "Otherwise, it cannot be said that one's property has been stolen by another. In the Shastras, the proper modes of acquisition have been laid down differently according to caste ; such as acceptance, conquest, trade and service in due order of castes." The first objection is mentioned by 'otherwise it cannot be said, &c.,' the second is mentioned by the rest of the passage, the words 'it would be meaningless otherwise' being understood.

9. Thus property like ownership accrues also from rules of Shastras, property and ownership being both of the same quality, and if the arguments establish accrual from Shastraic causes in respect of one, they establish it in respect of both. Therefore the Sangrahakara proceeds to establish the accrual of property on account of the rules of Shastras, as it proves the rule in respect of both : "Property does not arise from the fact of the right to dispose of a thing at pleasure, for the right of disposal is always regulated by the rules of Shastras." The meaning of this is (as follows) : "If it is argued : 'We do not say that property does not accrue because a thing is with a person, but it is proper that he who can at pleasure dispose of a thing, his is that property. Here is no defect in argument for in a thing stolen in which there is no right of disposal at pleasure can be subject of property.' This cannot be said, for in respect of disposal of wealth, the subject of rightful property, even the disposal for purposes like maintenance of Gurus or persons worthy of veneration and servants and the like, is regulated by Shastra. There is nothing mentioned which can be subject of unrestricted power of disposal. That is also maintained by the very learned person Dhareswara. Therefore from the text ; "they have no right, while the faultless father is alive &c," the want of ownership (of sons) being established, the text of Sankha "though afterwards acquired by them &c" should be construed as not establishing their ownership. It may be replied that we do not describe property or ownership as the right to disposal at pleasure but that which is capable of being lawfully disposed of at pleasure. (The objector says) that no doubt since the Shastras having regulated disposal by injunctions about the maintenance of Gurus, servants and the like, the lawful dis-

posal of property at pleasure is difficult of definition but so is also the capability of disposal on account of the want of disposal at pleasure. This is incorrect even if there is want of disposal at pleasure, the capability of lawful disposal at pleasure in property acquired by one may be defined. To that effect says Bhavanath in the Nyayaviveka: "And that is capable of (disposal at pleasure) in respect of a person which is acquired by him," On account of the use of the particle *Cha* (and), the meaning is that whatever property is acquired by a person, in respect of him that has the capability of lawful disposal at pleasure and thus in his opinion, the capability of lawful disposal at pleasure like right to property may be well defined Having regard to the objection that in this manner the thief will have right of disposal to property acquired by theft, he (Bhabanath) says: "the mode of acquisitions by birth &c is a matter of popular recognition." (The meaning is) that birth, purchase, partition, seizure and finding and the like unblamable modes are of popular recognition as the only modes of acquisition from which ownership accrues and not theft and the like. The particle *Cha* is used to signify that fallacious arguments may be easily refuted In respect to what is the rule to show that a mode of acquisition is unblamable and popularly recognized from early times, he says: "Therefore, the rules of Smriti embody customs recognized and established as rules from early times as unblamable like the rules of grammar and the like." (The meaning is) that inasmuch as the blameless mode of acquisition recognized by the people in early times only produces right, therefore that should be known for ascertaining ownership in secular and religious matters. Thus the blameless modes of acquisition which were early recognized by the mind of the people and established as such, were put in his own book (by Gautama) and are the rules of Smriti: "An owner is by inheritance, purchase, partition, seizure or finding. Acceptance is for a Brahmin an additional mode, conquest for a Kshatriya, gain for a Vaisya or a Sudra," and the like, which were composed like grammar which embodies the rules of correct expression in language long recognized by the people. Inheritance means mode of acquisition by inheritance, such as birth, which produces ownership in property paternal and the like, and that is mentioned by Gautama as the cause of acquisition of paternal property: "By birth wealth is obtained in ownership, say the teachers." By birth means by the very formation of the body in the mother's womb. Purchase is well-known. Partition means division which confers exclusive individual ownership in property paternal and the like. Seizure is the appropriation of ownerless water, grass, wood and the like found in forest.

Finding is the discovery of hidden treasure and the like. If these causes exist, the son and others who purchase, partition, seize and find become respectively the owners of the property acquired by sale, partition, seizure and finding. Also what is obtained by acceptance is an additional mode of acquisition, peculiar to a Brahmana; similarly for a Kshatriya what is obtained by conquest; thus also for a Vaisya, what is obtained as wages in agriculture and the like; and for a Sudra what is obtained as wages in serving the twice born castes, is the peculiar mode of acquisition. Thus is the text of Gautama about modes of acquisition of property to be understood Thus what has been mentioned by the Sangrahakara in 'whatever is found in one's hand &c' and what has been said by the learned Dhareswara; all that should be considered as refuted. By this also the conflict of the text of Sankha with the text (of Devala), "sons have no right while the faultless father is alive" is avoided It is unnecessary to dilate on the subject.

Sons have power to partition only when father has fault and not otherwise.

10. The correct position is as follows. By mentioning faultless (in the text of Devala), it is intended that while the father has fault, even during his lifetime the sons are not dependent on him. Therefore while the father is living but has faults like addiction to vices and the like, in respect of receipt, expenditure &c. the eldest son being independent, they are under his orders and the property is to be considered under the control of the eldest. Therefore Sankha Likhita says: "If the father be incapable, let the eldest manage the affairs of the family; or with his consent, a younger brother conversant with business" With his consent means with the consent of the eldest, because he is then independent. Younger brother means (any) younger brother (and not the immediate younger) because conversant with business is mentioned. The word incapable is used to signify decayed etc. Harita says: "But if he be decayed, absent in a distant country or afflicted with incurable disease, let the eldest son manage the affairs as he likes" To the words 'decayed etc.' the two words 'father living' should be added, because they are found in the previous text and are required by the meaning here. By saying 'as he likes' is shown that the (usual) dependence on father then ceases. When dependence on father ceases, the right of the sons to partition paternal property accrues and there may be partition of the paternal property at the will of the sons. Therefore Sankha says: "There may be partition without the father's desire when he is old or when his intellect is perverted or when he is afflicted with longstanding disease." When the father is without desire means when he is

without desire to partition. Old means too old. Perverted in intellect means deranged in mind. It is said that when the father loses his independence on account of old age and the like, the partition of paternal property may take place at the desire of the sons. Longstanding disease includes lasting wrath and the like for Narada says : " A father who is diseased or angry or absorbed by (sinful) worldly interests or who acts illegally has not the power to partition." Here on the other hand "the sons have power" should be understood as added. 'Acts illegally' means follows a course against the rules of the Smritis.

Son's power to partition when father is faultless.

11. Even when the father is without fault, he (Narada) mentions that there may be partition at the instance of the sons in certain cases : " Therefore after the father's death let sons divide the estate equally and also when the mother has ceased to menstruate and the sisters are married or when the father's sexual desire is extinguished and he has ceased to care for worldly interests." Though the text beginning with 'therefore after father's death' and ending with 'equally' shows the time for partition after father's death, still it is inserted there to complete the meaning of the succeeding verse The meaning of the second verse is that when it is ascertained that the father is incapable of begetting children and the children have been all married and when the father's attachment to wealth has ceased, the sons can partition. Baudhayana mentions the power of the father by saying of (the necessity of) his permission in the text : " the division of the estate takes place with the permission of the father "

When can father partition

12 When then can the father partition ? In reference to this, Narada says : "Or let a father alone himself distribute his property among his sons himself, when he is stricken in years." By saying 'stricken in years' shows that it is a rule applicable to the case when the father's independent power is not lost. By the use of the word *Eva* (alone) though the power of the father to partition is shown, still by the use of the word *Svayam* (himself) even the necessity of taking the consent of the sons is avoided. By the use of *va* (or) is shown an alternative to living together and not an alternative to partition by the sons, as the alternative is living together as is mentioned by Vyasa : " As long as the father and the mother are alive, the brothers should live joint."

13. Even after the father's death, the sons may live together for increasing the common wealth, as Sankha Likhita says : " If they choose, let them live together as

being of one mind and united they may increase their wealth " *i.e.*, on account of want of separate expenditure.

Benefits of partition and jointness examined.

14. Gautama says as a reason for partition that religious merit increases by it : " by partition there accrues increase of religious merit." How? In reference to that Narada says : " among unseparated brothers, the performance of religious duties is single. When they have come to a partition they have to perform their religious duties (Dharma) each for himself."

Dharma means Dharma on account of the worship of the Manes, Gods and Brahmanas, as says Vrihaspati : " The worship of the Manes, Gods and Brahmanas by those residing together and cooking their food together, is single. But when they separate, these take place separately in each house."

It may be objected that religious merit on account of fire-sacrifice increases in the case of the separated but not in the case of the unseparated for want of right ; and thus the benefits accruing from fire-sacrifice which can only be performed with undivided wealth are a reason why partition is preferable, and to that effect says the Sangrahakara : " By partition the paternal property becomes the property of the sons ; when there is ownership then proceed (religious ceremonies) ; therefore separation is lawful." Here proceed means the fire-sacrifice and the like requiring property proceed. The answer is this It is not established that by partition paternal property becomes the property of the sons. It has been established before that ownership proceeds from birth. Therefore there is ownership of the unseparated and the merit of fire-sacrifice and the like, which can be performed with wealth, accrues to them all. Thus there is no reason for preference of partition over jointness. The conclusion is that the increase of religious merit in case of partition is in the manner mentioned before, which is declared by Gautama (and not otherwise).

CHAPTER II.

SECTION I.

THE RULE OF PARTITION DURING THE LIFETIME OF THE FATHER.

1. On this (the matter of the subject of this Chapter) Sankh Likhita says : " When the father is living, partition of wealth, if allowed by him, may take place either publicly or privately according to law." The partition during

father's lifetime which is allowed, may take place publicly *i.e.*, in the presence of relatives or privately among themselves secretly according to law *i.e*, in manner not transgressing the law. This is the meaning.

2. The mode of it is spoken of by Katyayana thus: "That partition is declared lawful in which all the property is taken in equal shares by the father, the mother and the brothers." The partition, in which the father and others to whom all the property belong take equal shares, is legal, because it is according to Shastras and not in violation of law. This is the meaning.

3. In order to declare what is lawful partition, because on account of the greater share of the eldest there is a different rule of partition, Baudhayana says "A father may therefore divide (his property) equally among all, because no distinction (is mentioned)."

In the text of the Brahmana · "Manu divided his estate among his sons" about partition during father's lifetime, there being no mention of distinction of shares, there should be equality by virtue of the rule of Nyaya that equality is the rule when no distinction is to be found in the Shastras.

From this rule of Shastra the rule of equality of share of father and sons is to be understood With reference to a different text of Veda about the greater share of the eldest, he (Baudhayana) says: "the eldest takes one chattel from each kind of property; it being declared in the Veda: 'the eldest should be gratified with wealth'." By saying one chattel Baudhayana shows that is intended by the text of the Veda, which speaks of wealth in the singular. Nirabashayati means gratifies So also says Apastamba. "After having gladdened the eldest son by one special piece of property, let the father during his lifetime divide his wealth among his sons in equal shares." The father during his lifetime, after satisfying the eldest son with some excellent article from the common property should divide the remainder giving equal shares to himself and the sons including the eldest. This is the meaning.

4. Thus the preferential share is on account of being firstborn and that extends only to one excellent chattel. The remainder should be equally divided This is the different rule of partition mentioned, it should be understood. Thus of the two rules mentioned by Katyayana and Baudhayana, the father may adopt any one he chooses, because in a partition by the father, he is the master and the adoption of a rule is according to his desire.

5. All that is declared in brief by Yajnavalkya: "A father when making partition (of his property) can

divide it among his sons as he pleases, either giving to the eldest the best share, or in such wise that all share equally." In the second hemistich the rule mentioned before has been indicated in a different order. The adoption of any one of the rules depends on the will of the father and not on that of the sons. This is declared by the first hemistich.

6. Thus whatever mode is adopted by the father according to his desire, the sons cannot disregard. This is the meaning. To that effect he (Yajnavalkya) says . "A distribution by the father in smaller or larger shares is lawful." If the younger sons are given less shares, because they are not entitled to a superior share and if the elder sons are given greater shares, such division by allowing preferential shares by the desire of the father as lawful being authorized by the Shastras, shall be assented to. This is the meaning. Narada also says the same thing: "When a father has distributed his property among his sons, in equal, less or greater shares, that is a lawful distribution for them, for the father is the lord of all." When the partition is made in equal shares, the eldest cannot raise the objection 'to me an excess share has not been given.' Similarly when there is unequal division, the younger sons cannot raise the objection, 'to us less has been given and to the eldest greater' because of the legality of such partition at the father's desire. How is it legal ? To show that, it is said "the father is lord of all" *i.e.*, of all kinds of partition by the father, because, he is the master. This is the meaning.

7. Again those sons who do not abide by a legal partition are punishable So says Vrihaspati: "Those sons for whom their shares have been arranged by the father, whether equal, less or greater, must be compelled to abide by such arrangement. Otherwise, they shall be punished." To the words 'by the father' here should be added the words 'in manner prescribed in the Shastras,' because of partitions made otherwise are not to be maintained. Indeed even in self-acquired property a partition in which one son is given a thousand gold coins and another a shell cannot be lawful, because partition in the first mentioned mode (*i.e.* in equal shares) is recognised as valid being unblamable, according to popular ideas. Nor should it be said that unequal partition at the father's will is the first mode, which is unblamable, inasmuch as it is laid down (in the text of Yajnavalkya), "can divide among his sons as he pleases" because the same text does not lay down the rule of such (unequal) partition. Again (such unequal partition) being in itself unreasonable, the construction of Apararka of the text (of Yajnavalkya) that

from its concluding words the text lays down the rule of such unequal partition, is refuted, because there is good reason for the position first established. The position that in self-acquired property also an unequal partition by the father, when there is objection by the sons, should not be maintained, is established.

Again the position of Apararka that (in the text of Yajnavalkya) the words 'to the eldest the best share' is for showing that it is by way of preferential share and therefore by it is included all the modes of preferential share mentioned the text of Manu and others like "of the eldest, the preferential share is one-twentieth" is also to be rejected, because of the reasonableness of the position that (the text of Baudhayana) 'the eldest takes one chattel from each kind of property" refers to the particular preferential share mentioned in case of partition during father's lifetime.

8. Vriddha Vrihaspati mentions another mode in which there is a greater share for the father in the text: "When the partition is made during the father's lifetime, the father himself takes two shares." To it, should be added when the father divides.' So says Narada: "Two shares let the father keep for himself when distributing his property." By the words 'when distributing' is shown that the father has two shares when the partition is by the father during his lifetime and not when the partition is at the instance of the sons during father's lifetime. A distinction is mentioned by Sankha Likhita even in the rule of taking two shares by the father in partition during his lifetime: "If he has only one son, he will take two shares" The word 'he' refers to the father. By the words 'has only one son' is understood that when he is past the age of begetting sons *i.e.*, is decayed by extreme old age. Therefore when the rule is found by which a father having many sons and decayed by extreme old age, takes a share, Harita lays down the rule of unequal partition between father and sons thus: "The father when living may distribute (the whole property amongst the sons) and retire to a forest or enter the order of old age; or he may distribute a small portion and continue to live in his house reserving the larger portion for himself. If he should become indigent, he may take back from them, and to such as become indigent he may give a portion." (Here the mention of) small portion being an indication of his own share, the father dividing the sons may take the greater *i.e.*, double share, and may live in his house. While so residing if he becomes indigent and suffer for want of food etc., the father may take from the sons wealth sufficient for the support of his family, out of the property

accumulated by them with the share allotted to them by himself. The sons also if they become indigent and suffer for want of food etc., should be given further shares. 'Retire to a forest' means become Vanaprastha. The order of old age means the fourth order (of Yati). By mentioning 'order of old age' is indicated that (the rule) refers to extreme old age. Thus as in old age the father is dependent on sons, this rule as applicable to father is indicated by the text of Veda : 'as the father in distress runs to his son.' By the use of the words 'small portion' the rule as applicable to the son, is indicated by the text of the Veda : 'like as the son in distress runs to his father.' It should be understood that bearing in mind the above, (Harita) has laid down the rule 'if he should become indigent' etc., as in the case of the father, so in that of the son, as embodying the meaning of the above two texts of the Veda. Therefore in order to show that the two rules of his own Smriti ; 'he may take back from them' (and) 'to such as become indigent give a portion' have Vedic authority he (Harita), has embodied, concisely the texts of the Veda of similar import. He also cites the authority of the Veda providing about a sacrifice called the Grahopadana, when he says : "the father is the *Graha* or receptacle called the Agrayana and the sons are the other *Grahas* or jars If the Agrayana is exhausted the Soma juice is supplied from the other receptacles. Likewise, if the other *Grahas* or receptacles are exhausted, the juice is supplied from the Agrayana." Thus is described the sacrifice about disposing of the receptacle of Soma juice in a particular mode called the Grahopadana. Agrayana is a particular receptacle for Soma juice. Others are the receptacles called Aindra (belonging to Indra or speech), Vayabya (belonging to Vayu or breath), etc Upabadashyet means or if it becames exhausted. The particle Iti after Skandeyu (in the concluding portion) is used to indicate the remaining portion of the text of the Veda. (Harita means to say) ' by the text of the Veda paraphrased, we have explained the meaning of the portion of the Vedic text cited by us by the two passages ' if he is indigent, he may take back from them, ' and to such as become indigent he may give a portion.' This is the meaning. This text also should be explained as supporting the rule of equal division at the desire of the father.

9. When Katyayana describing the mode of partition during father's lifetime says : "When all the property is divided in equal shares by the parents and the brothers, the partition is lawful," but as the rule of equal partition is not mentioned to be of universal application, he affirms the position that the father makes equal division at his desire ;

(and then) also (as) Yajnavalkya says : "if he give equal shares, such of his wives as have not received Stridhana from their husbands or their father-in-law shall also equally share." *(The meaning is that) in his old age when the father at his desire divides giving shares equal to his own, then each of his wives should take a share equal to his own.* Thus the doubt that arises from the text of Harita that "there is no partition between husband and wife" is avoided. Thus the position is faultless.

10. When the son has no desire to take his share of the paternal wealth from his own ability to acquire wealth, the father should separate him by giving him what little he may accept. To that effect says (Yajnavalkya). "if one have means and do not desire (to share in the paternal estate), he shall be separated, something trifling being given to him." When again there is partition at the instance of the sons during father's lifetime, then it should be made in the mode of partition by equal shares as mentioned in the text of Katyayana : "(When) all the property etc," because there is no text prescribing a different mode in partition at the instance of the sons during father's lifetime and because of the rule of Narada "sons divide in equal shares" which applies to the case mentioned by him which follows, (namely) "when the mother has ceased to menstruate &c." as mentioned in the previous Chapter, while describing partition at the instance of the sons during father's lifetime.

CHAPTER II.

SECTION II.

PARTITION AFTER THE FATHERS' DEATH.

With regard to the above matter, Harita says "there is equal division of the estate on the death" *i.e.* of the father, which is meant from the context. The meaning is that when the brothers partition after the father's death, they should divide the wealth in equal shares. Paithinashi also says : "When the paternal estate is divided, the brothers take equal shares." The paternal estate means inherited wealth. By the use of the plural in the word 'brothers' it should not be said that when there are two brothers only, there can be no partition, as the word is used to mean heirs of common property. Therefore Devala prohibits the partition of wealth of a single person, who is owner of the common property (saying) : "When there is only one son of the some caste, the inheritance is not divided." The words of the same caste are used to show that when there are many brothers of different caste, the heritage is

sometimes not divided. Manu also has laid down: "the son by a Sudra wife of a Brahmin, or of a Kshatriya or of a Vaisya is not entitiled to a share of the heritage." It is therefore said that when there are several brothers, Sudra and not Sudra, the son of the Sudra wife with whom there can be no valid marriage, is not entitled to the heritage but the non-Sudra son takes the whole.

2. Likewise, when there are several brothers of the same caste but excluded from inheritance by disability, one (who is qualified may take (the whole). So says the Sangrahakara "the eldest takes the whole, when the younger brothers are disqualified, or the middlemost or the youngest, when the elder brother is disqualified.

3. It may be objected that the heritage is not divided even when there are many qualified brothers of the same caste, for Manu says: "the eldest alone may take the whole paternal estate, the others shall live under him just as (they lived) under their father;" and it cannot be said that this text only recommends living jointly, because there is another text by him (Manu) for that purpose (namely) "either let them thus live together etc." True, there is such a text. But the text 'either let them thus live together' is the recommendation in the case of brothers who are of age. But when the younger brothers are minors, there ought to be living together, till they attain majority; in this manner and to show this is the injunction, "the eldest alone may take etc." Thus by this text there is no prohibition of partition of heritage among several brothers of the same caste, by its being applicable to different circumstances. Thus there is no conflict.

4. As regards the text of Narada: "or the eldest brother shall maintain all (the junior brothers) like a father, if they wish it, or even the youngest brother, if able; the well-being of a family depends on the ability (of its head)," it applies to the case of incapable younger brothers. Again it may be objected that the text of Gautama: "or the whole estate may go to the first-born and he shall support the rest as a father," shall not be considered as of the same import as the text of Manu (mentioned above) for the use of the word 'or' indicates that the right of the younger brothers who have attained majority is an alternative rule. True the text is not of the same import as the text of Manu, but it being opposed to a clear text of the Veda, should be disregarded So says Apastamba: "Some declare that the eldest son alone inherits his sons. That is forbidden by the Shastras. For it is declared in the Veda without (marking) any difference (about the rights of the sons), that 'Manu divided his wealth among his sons'." The meaning is that some teachers maintain that the

eldest is alone heir of the father's wealth among sons, (but) this opinion is opposed to a clear text of the Veda, for the following is found in the Taltiriyaka Brahmana: "Manu, divided his wealth among sons" without mentioning that there is any difference in the rights of sons. After this he (Apastamba) expresses his own opinion thus "Therefore all who are virtuous inherit" All *i.e.* all sons.

5. Vrihaspati also says to the same effect: "Sons who are heirs of father's wealth are all equal sharers." The meaning is that they share equally the wealth and the debts (of the father). So says Yajnavalkya: "After the death of the parents, the sons should divide the wealth and the debts equally." The debts here mean of the father, which is understood, because of the rule that debts which are not of the father should be paid at the time of partition. Therefore Katyayana says: "A debt contradicted by a brother, uncle or mother for the purposes of the family should be paid by the co-sharers at the time of division." Narada however says that even the debt of the father should be paid at the time of division: "What is left (of the father's property) after paying the father's debts shall be divided by the brothers in order that their father may not continue a debtor." Gautama says: "Out of the paternal wealth the Nava Sraddhas should be performed jointly." The Sangrahakara also says: "The partition after father's death (should take place) after the Ekoddishta Sradha." Thus when the paternal estate is in excess of the wealth necessary for defraying the expenses of the Nava Sraddha and for paying the father's debts, Narada's rule should be followed; when it is otherwise, Yajnavalkya's rule should be followed. Even some debts of the father need not be paid out of the paternal wealth at partition but may be divided among the sons So says Katyayana: "Whatever is given for a religious purposes or through affection and whatever debt was specifically directed by the father to be paid by the sons, shall be divided when known and need not be paid out of the patrimony." What was intended for religious purposes, what was orally promised to be given by father out of affection and what was directed by the father to be paid by the sons: these three kinds of debts when known should be divided This is the meaning.

6. If a son when able to acquire wealth by his own acts of earning does not wish to take paternal wealth, in order to avoid disputes for his share by his sons, he should be given some property out of the divisible wealth by the other sons (his brothers) and the rest should be divided. So says Manu: "He among the brothers, who able to earn himself does not desire the paternal wealth, should be debarred from his share being given something as maintenance."

7. According to the principle that reward accrues from exertion, a brother (working for the rest) should be given by the others some thing, grain, etc, in excees of the equal share to which he is entitled. So says Narada : "He who engaged in the affairs of the family does its work, should be supplied by the brethren with food, raiment and carriage."

Thus the mode of equal division after father's death has been expounded.

CHAPTER III.

THE MODE OF UNEQUAL DIVISION.

1. On this Vrihaspati says · "Sons who are heirs of father's wealth all take equally ; but of those, he who is possessed of learning and good works is entitled to receive a greater portion." Those sons, excepting the outcast and the like, who are similar in possessing or in not possessing learning etc., are equal sharers. But among those who are dissimilar in respect of non-possession of learning etc., they who are possessed of learning are entitled to receive greater wealth either by way of preferential share or of unequal division. Here also there is a difference in the, portions of wealth to be received according to the difference in good work and not because of difference in learning, as says Katyayana. "The learned should award superiority in share according as the wealth on partition may be well appropriated or not." It should be understood to refer to the case where there is considerable wealth. Therefore Manu says : "But among (brothers) equally skilled in their occupation, there is no additional share of the best in ten ; some trifle should be given to the eldest as a token of respect." Preferential share is that which is set apart from the partible wealth for giving to the eldest and the like. 'In ten' signifies when the property is only sufficient for maintenance. 'In their occupations' *i.e.*, in the work which they are required to do according to their station in life. 'Skilled' signifies that among many brothers, who are capable of work, even when there is considerable wealth, when there is equal proficiency in work, there is neither the giving of a preferential share nor the giving of a trifle as a mark of respect. But among brothers having little wealth, and even if they are equal in learning etc, and on account of the wealth being barely sufficient for maintenance there being no room for preferential share, the eldest should be given some trifle as a token of respect. Thus when there is considerable wealth and difference in

learning etc., among brothers, in a partition among them, there may be a preferential share. This is the meaning.

Manu thus describes the mode of allowing preferential shares: "The additional share for the eldest shall be one-twentieth and the best of all chattels, for the middlemost half of that, but for the youngest one-fourth." One twentieth of the divisible wealth and also one excellent article is the additional share of the eldest who is excellent in learning and the like; one-fourtieth and one article of middling value is the additional share of the middlemost; 'one-fourth' *i.e.*, one-eightieth (of the divisible wealth) and one inferior article is the additional share of the youngest in birth and in learning etc. He (Manu) also describes the mode of partition of the remaining wealth "Having thus deducted the additional (shares), the remainder should be divided equally." The remainder after deductions should be equally divided is the meaning. Or if unequal division is to be made and no preferental shares are to be deducted, then Manu prescribes: "if no preferential share is deducted then the following is the mode of partition. The eldest takes one additional share, the middlemost a share and a half, and the youngest sons take each one share. This is the law settled" one additional share, means double share from the text of Gautama: "Or let the eldest have two shares" Eldest means first in learning and the like Therefore Vrihaspati says "He who is the first by birth, learning or good qualities shall take a couple of shares out of the heritage." Thus seniority in birth is not the cause of a preferential share or of unequal division but seniority in birth joined with superiority in learning &c is. This mode of unequal division is not allowable in the Kaliyuga, says the Sangrahakara: "As the Niyoga or the sacrifice of a cow (are not now allowable), so partition after deducting preferential shares is also not allowable now." Now means in the Kaliyuga. So says the Purana: A second marriage of a girl once married, the preferential share of the eldest, sacrifice of a cow, the procreation on a brother's widow and the carrying of the earthen pot (the symbol of a Sanyasi): these five are prohibited in the Kaliyuga." Preferential share of the eldest means, share on account of superiority in birth, learning, etc. Slaying of a cow means the slaying a cow as part of a sacrifice, 'Kamandooloo' means carrying of the earthen pot by a householder Thus Dhareswara says: "The texts "the additional share for the eldest shall be one-twentieth" etc. and the like are not considered because (the practice is) abhorred by the people" *i.e.* in the Kaliyuga, which is understood, because, it was allowed in the Dwapara Yuga and thus not abhorred then.

As regards the observation of Visvarupa "as the injunction that a large bull or a large goat should be offered to a Srotriya is not allowable, being opposed to the practice of the good, so is the preferential share of the eldest," it is not right, because when Smriti and the practice of the good are opposed to each other, the latter being inferior in authority is barred. This inferiority follows from the text of Vasista : "The sacred law has been settled by the Veda and the Smritis ; on failure of these two, the practice of the good is of authority"

The argument that the offering of a bull and the like has not the sanction of the practice of the good and is not good practice being barred by the practice of the good is not correct It should be said that as they have not the sanction of the practice of the good, they should not be practised, as said by Srikara and not what has been said (by Visvarupa).

As regards the observation of Vijnaneswara that though it is true that this unequal division is found in the Shastras, it should not be practised, because it is abhorred by the people, it is a mere opinion. There is no abhorrence of the people for unequal partition. On the contrary, there is a liking of the people for allowing a greater share to the eldest and the like, who have superiority in respect of learning, good qualities and meritorious works. This little need be said.

Again the compilers of Smritis, like Shambhoo, Srikara, Devaswami and others have written largely in discussing the texts on preferential shares, considering that that the allowing of preferential shares and unequal partition are good usage. (With regard to this, it should be said that) those texts from the resolution of the knowers of law and from the texts of Puranas, in the Kaliyaga, are always wanting of a certainty in the sanction of the good, and thus the labour is useless and the discussion would only swell the bulk of the book. Therefore we have duly shown only a portion of the subject of preferential share and the like.

CHAPTER IV.

OTHER MATTERS CONCERNING PARTITION AFTER FATHER'S DECEASE.

1. Now other matters concerning partition after father's decease are described.

2. (Vasista says) : Now follow the rules regarding partition of the estate among brothers. And (let it be delayed), "until those widows, who have no offspring, bear sons." The meaning is that after the 'widows'

Right of females.

i.e. widows of the father 'who have no offspring' *i.e.* who are pregnant 'bear sons' *i.e* after their delivery, and also after delivery of the childless wives of brothers living together and ascertainment of the sex of the issue, there may be partition, and that in such cases, there is no partition after Nava Sraddha of the father It may be objected that why should the natural meaning of the text that after Nava Sraddha there may be partition among brothers and childless widows, be discarded. The answer is that such a construction is discarded because the words 'until those widows bear sons' convey a meaning that is inconsistent with it and because a partition with females who are incompetent to inherit is impossible, as Baudhayana says after the words, 'a female is entitled' which are understood: "not to the inheritance, as the Veda declares · 'therefore women are considered to be destitute of strength and of a portion " The particle *Hi* means because. The meaning is also that as Nirindriya* *i e.* persons, who have been deprived of an organ by disease and the like, and females are incompetent to inherit, and therefore females are not entitled to the partible wealth derived from another. It should be understood that (the text of Baudhayana) "Nirindriya etc ," embodies the meaning of the text of the Taittiriya Veda "therefore are women without strength and devoid of a portion." If women are incompetent to inherit, how then has it been declared by Yajnavalkya that "if partition be made after the father's death, the mothers shall also have an equal share?" How also does Vyasa say "the sonless wives of the father are declared equal sharers; and all the grandmothers also are declared equal to mothers" ? How again does Vishnu say "mothers shall receive shares proportionate to their sons' shares; and so shall unmarried sisters"? It may be objected that if women are incompetent to inherit, the texts declaring the competency to take shares by females, beginning with mothers and ending with daughters, are improper. But they are certainly proper, for observations declaring the right of inheritance of persons incompetent to inherit are inconsistent (with texts declaring such incompetence), but not with texts declaring their right to a portion. A portion signifies division and not inheritance. We find in books that a portion may be given out of common property. Therefore the females beginning with mothers, though not entitled to partition from want of property in the inheritance, still by reason of their right as wives have got ownership in the partible wealth and thus the females, beginning with mother, should be made participators of as much wealth as they require for their wants by way of portion to which their right is established. It should be understood that this is meant by Yajnavalkya and others. The definition in the Mitakshara

that Daya means wealth which becomes the property of another solely by reason of relation to another is incorrect. If it were correct then the wealth of the wife derived on account of relationship with the husband would also become Daya and thus the inconsistency with the text of the Veda "therefore are women devoid of Daya" would become unavoidable.

Provided mother not entitled to share Mother takes only as much as is necessary for her needs

3. In our opinion heritage means property capable of partition which becomes the property of another by reason of relationship to the owner. The property obtained by the wife is not partible and is not heritage. The Stridhana derived from the husband is always impartible, because in this word no division of property is seen between husband and wife and also from the text of Harita " there is no partition of property between husband and wife." Therefore a mother is not entitled to a share of the inheritance by way of adjustment of her ownership but she takes only so much as she requires for her needs. Therefore in another Smriti, it is said that the (text about) taking of a share applies only to a mother without wealth and not to mothers generally, in the text: " mother when without separate property of her own, takes a share equal to that of a son on partition " A mother without separate property *i e.* without peculiar Stridhana of her own, takes a share equal to that of a son on a partition by sons, after the death of the father. The word mother here includes a step-mother, from the text of Vishnu that " mothers take shares according to the shares of sons." From the qualifying words 'without separate property' it follows that a mother having wealth takes a share, when it is insufficient for her maintenance and for the performance of duties requiring wealth, and also that when their wealth is thus insufficient for both these purposes, the female heirs beginning with the mother are not entitled to an equal share (with the sons) but take a less share which may be necessary for their needs. Again when the partible wealth is very large, the female heirs beginning with the mother, even when without wealth, do not take equal shares but take only a share less than an equal share, which is sufficient for their needs. From the qualifying words 'without separate wealth' it follows that the mother takes a share because it is required for her needs and not because of her right to the inheritance, like that of the brothers (sons of the father). The qualifying word 'equal' is not useless, even though the mother takes an equal share, only when it is necessary for her needs, because it bars her right to more, when the wealth is small and she requires more than an equal share.

Daughter's share is for marriage expenses.

4. Again when Vishnu says that daughters are entitled to equal shares with sons, because the share they take is not heritage, in which though they have interest by birth but which has not become their property independent of others, even on the death of the father, and because by the qualifying word 'unmarried' it is indicated that the daughters take shares according to the shares of the fathers for the purposes of their marriage and not like the brothers, by way of partitioning the inheritance, it is meant that they take shares not as heritage but for the purposes of defraying the expenses of their marriage. Therefore this text applies to the case where the partible wealth is insufficient.

Sisters get each one-fourth of the share of a brother, when estate is large; when the estate is small, they get equal shares.

5. Therefore Devala says: "to the unmarried daughters should be given (a portion of) the estate of the father as marriage portion" Marriage portion means wealth necessary for marriage. Therefore Yajnavalkya after premising "should be disposed of in marriage," says "sisters by giving them as an allotment the fourth share" The meaning is that the sisters are to be disposed of in marriage by giving to each sister one fourth of what may be the share of each brother. In another Smriti also, it is said. "afterwards the unmarried sisters take the fourth share from the brothers." The meaning is on partition after the father's decease, each unmarried daughter takes one-fourth share from the brothers. These texts refer to cases where the estate is a large one. To that effect says Katyayana. "But a fourth share is ordained for unmarried daughters and three shares for sons but where the property is small, equality of shares is ordained." Unmarried daughters means each of them (*i.e.* a fourth part is the share of each) and thus sons means each of the sons (*i.e.* three parts is the share of each son). The meaning of the fourth portion of the text is that when the partible wealth is small the share of each sister is considered by Vishnu and others as equal to that of a son. The rule "where the property is small equality of shares is ordained" applies (to the rule of Vishnu that) "mothers shall receive shares proportionate to their sons' shares" by parity of reasoning. Thus where the estate is not small, the share is but one-fourth is understood by implication. "Three parts for the sons" refers to the case where the brothers and sisters are equal in number. But where the sisters are less in number (than the brothers), then the sons do not get three parts but something more.

Again as to the text of Manu: "But to the maiden sisters the brothers shall severally give portions out of their shares, each out of his share one-fourth part; those who

refuse to give will become outcasts," though it appears that the brothers should give to the maiden sisters one-fourth of the shares of the brothers, the words 'their own' being twice repeated, still it being applicable to cases where the number of sisters is greater (than that of the brothers), it is not inconsistent with the rule of the ancient Smriti mentioned above. It is not meant that the brothers should each give a fourth of his own share to each one of the sister, as it will be inconsistent with the ancient Smriti, but all the brothers should together give one-fourth of their share and that should be equally divided by the unmarried sisters As regards the text of Vishnu : "the expenses of unmarried daughters should be disposed of in marriage defraying the expenses in proportion to his own wealth," it refers to the case where there can be no partition there being only one son or when the brothers live together.

Ceremonies of brother up to upanayana should be performed

6. The word unmarried daughter is intended to be symbolical of all children of the father. Therefore Vyasa says : "Brothers whose initiatory ceremonies have been performed should get those ceremonies performed by those brothers whose initiatory ceremonies have not been performed, from the paternal wealth and also of the unmarried sisters, in due form." Vrihaspati also says : "the initiatory ceremonies of younger uninitiated brothers should be performed by the brothers by means of common paternal property." This refers to brothers whose father is dead. Uninitiated means uninitiated by the father. Therefore Narada says : "For those brothers of whom the initiatory ceremonies have not been duly performed by their father, they must be performed by the other brothers defraying the expenses from the paternal property." He (Narada) also says the following in case of want of paternal wealth : "when there is no paternal wealth, the brothers initiated before should get the initiatory ceremonies of the uninitiated brothers contributing funds out of their own property" Initiatory ceremonies mean ceremonies beginning with the birth ceremony and ending with the investiture with the sacred thread. These must be performed. As ceremonies, like marriage, have not to be performed of perpetual students, there is an alternative and the word Sanskara is used in a limited sense. This is faultless.

With daughters the ceremony of marriage indispensable.

7. But of the unmarried sisters the ceremonies are those ending with marriage, as they have got no investiture ceremony and these must be performed, when there is no paternal wealth by contributions from their own wealth, by

the brothers, marriage in their case being indispensable as the investiture ceremony is in the case of the brothers.

Unmarried daughter takes mother's and her own ornaments and the like.

8. At the time of partition, the unmarried daughter receives the ornaments worn by her and the like, as says Sankha: "when the patrimony is divided, the unmarried sister gets the ornaments of the maiden and expenses of marriage and also Stridhana (as marriage portion)". Patrimony means heritage When that is divided by the brothers, the unmarried daughter receives the ornaments worn by herself, the one-fourth share and the like, necessary for marriage, and also the Stridhana given by the father and the like. Baudhayana also says. "The daughters shall obtain the Sampradayika ornaments of their mother or any thing else" Sampradayika means ornaments descending from mother to daughter. 'Any thing else' means ornaments other than those. Ornaments worn by the mother are taken by the unmarried daughters, when the maternal estate is divided. This is the meaning.

CHAPTER V.

EXCLUSION FROM INHERITANCE.

Enumeration of persons excluded.

1 On this matter Devala says: "When the father is dead, an impotent person, a madman, an idiot, a blind man, an outcast, the offspring of an outcast and a Lingeé or one wearing the token of a religious mendicant are not entitled to a share of the heritage." Lingee means a perpetual student, a hermit and the like and includes a Buddhist or Jaina mendicant, a Pasupat sanyasi and the like. The words 'when the father is dead' are used to indicate the time of partition. It follows that when there is partition during father's lifetime, the impotent and the like do not become entitled to shares. Therefore, in partition during father's lifetime, their exclusion from shares is explicitly thus declared by Apastamba: "He should during his lifetime, divide his wealth equally amongst his sons, excluding the eunuch, the madman and the outcast." The word *cha* (and) is used to include the leper, the idiot, the blind and the like 'Excluding' means leaving them out. Manu also says: "Eunuchs and outcasts, bornblind or deaf, the insane, idiots and the dumb, as well as those deficient in any organ, receive no share." 'Deficient in any organ' means those, any organ like the organ of smelling of whom, has been destroyed by disease and the like. Narada also says: "One hostile to his father, outcast or impotent or *Apapatraka* shall not take a share, even if

he is a legitimate son; much less so, if he is a Kshetraja son." Apapatraka means Apapatrita, from the text of Sankha Likhita: "Of one who is Apapatrita, the heritage, the oblations of food and libations of water cease." Apapatrita mean one expelled by his kinsmen for grave offence. Vasista also says: "But those who have entered a different order receive no shares." A different order means an order other than that of the householder. It must not be said that the Upakurvana (or a temporary student) is excluded, for it is intended that only (those who betake to) orders of life inconsistent with the order of the householder (are excluded.)

Incurable disease at the time of partition excludes.

2. Vishnu also says: "Outcasts, eunuchs, persons incurably deceased or deficient (in organs) do not receive a share" Deficient means deficient in an organ By saying 'incurably deceased' is shown that persons afflicted with impotence or deficiency or the like capable of being cured are not excluded. By this (it is intended) that persons, who are afflicted with incurable disease and the like at the time of partition, are excluded and not only those, who naturally (or from birth) are afflicted with such disease or impotence and the like.

Exclusion of apostates from religious order and sons of irregular marriage.

3. Katyayana also says: "Thus also the son of a woman married in an irregular order and one born of a wife of the same *gotra*, as well as an apostate from a religious order, are unworthy of the inheritance". The son of one married in irregular order means the son of a woman married in violation of the order of age and the order of birth (*i.e.* caste). Likewise the son of one of the same *gotra* *i.e.* of one who has married a woman of the same *gotra* by the latter (is excluded); likewise an apostate from a religious order, *i.e.* one who having entered the fourth order of life gives it up. These *i.e.* sons of persons married in irregular order and the like are not deserving of the inheritance.

Illegitimate sons excluded.

4. Manu also says: "The son of a woman not duly authorised to beget one, as well as one begotten on a woman already having a son by the younger brother of her husband, both these are not entitled to the inheritance. They are styled 'born of adultery' and 'born of lust'."

A son begotten on a woman not married by a person and who is another person's wife and not duly authorised, is 'born of adultery'. The son obtained by a woman having a son *i.e.* a son begotten by her husband's younger brother on (a widow) having a son is 'born of lust.' These two are not deserving of shares. It is thus declared that the

illegitimate son and one born in violation of the rule of Niyoga are not entitled to the inheritance of the husband of the woman.

5. Vrihaspati also says: "Though born of a wife of the same caste, a son destitute of good qualities is unworthy to obtain paternal wealth" Destitude of good qualities means destitude of qualities for performing acts for the temporal and spiritual benefit of the father He (Vrihaspati) subsequently says: "The son delivers the son from debts to superior and inferior beings, a son who cannot fulfil this duty, is of no use. Of what use is having a cow which neither gives milk or bears calves. For what purpose is a son who is neither learned nor virtuous A son wanting learning courage and good purpose and devoid of austerity and wisdom and wanting in good conduct is like urine and excrement." Debts due to superiors means debts due to Rishis, Gods and Ancestors. Debts due to inferior beings means debts due to creditors. As urine and excrement, which though they proceed from one's own body are contemptible, so a son born of one's born when devoid of learning and the like is worthy of no regard Therefore it is said (such a son) is like urine and excrement

Vicious brothers excluded

6. Manu says: "All brothers who habitually commit forbidden acts are unworthy of the share of the property." Vikarmastha means addicted to forbidden actions. Property means divisible wealth.

Disqualified heirs are entitled to maintenance

7. All those that are thus enumerated as excluded should be maintained. To that effect says Yajnavalkya · "An impotent person, an outcast and his issue, one lame, a madman, an idiot, a blind man and a person afflicted with an incurable decease, as well as others (similarly disqualified), must be maintained being excluded from participation."

The word 'Tajja' means the issue of the outcast. By the word 'Adya' others, who are disqualified (according to texts) mentioned before, are included. 'Must be maintained,' *i.e.* by those, who take the inheritance, from the text of Vishnu: "They should be supported by the heirs."

Amount of maintenance.

8. With reference to the manner in which these persons are to be maintained, Manu lays down: "But it is just that (a man), who knows (the law), should give even to all of them food and raiment according to ability without stint; he, who does not give it, becomes an outcast." 'Without stint' means for life.

9. Katyayana also says: "Food and raiment for life should be given to him by his kinsmen But when there are no kinsmen, he takes the paternal wealth. The kinsmen should not be compelled to give him any property acquired by them, which is not derived from his ancestors" By his kinsmen *i e* by the kinsmen of the disqualified heir, who take his paternal wealth, he should be given food and raiment. This is in accordance with the texts of Manu and others. This is the meaning The meaning of the words beginning with Apitryam (not derived from the ancestors) is as follows The king should not compel the kinsmen to pay for the maintenance of a disqualified heir, when they have not received his paternal wealth Thus the rule is that it is not necessary for kinsmen, who have not received the paternal wealth of disqualified persons, to maintain them.

Kinsmen to give maintenance when there is paternal wealth

10 Devala mentions an exception to the (above) rule providing for the maintenance of all disqualified heirs "Food and raiment should be given to them, excepting the outcast." The son of the outcast being also an outcast is also excluded (from maintenance) Therefore Baudhayana says "Granting food, clothes (and shelter), they shall support those who are incapable of transacting legal business, (*viz*), the blind, idiots, eunuchs and so forth, and those who neglect their duties and occupations; but not the outcast nor his offspring" Incapable of transacting legal business are the dumb and the like 'Who neglect their duties' are those who are incapable of performing works of religion and works for temporal advancement. Vasista however prohibits the maintenance of four classes of person. (He says) · "But those who have entered a different order receive no share; nor (those who are) eunuchs, madmen or outcasts. Eunuchs and madmen (have a claim to) maintenance." Here by the rule of construction that mentioning a rule as applicable to certain specified persons is for the purpose of showing that other persons specified (in the same text) are excluded, the maintenance of an outcast and of one who has entered a different order is prohibited. As without entering a different order there cannot be apostacy from a religious order, the prohibition of the maintenance of an apostate from a religious order is also understood. Thus it should be understood that it is necessary to maintain all disqualified heirs, excepting an outcast, the son of an outcast, one who has entered a different order and an apostate from a religious order.

Outcast, his son, one who has entered a different order and an apostate from a religious order not entitled to maintenance

Sons of disqualified heirs excepting the outcast take.

11. In order to clear the doubt that persons because they are sons of disqualified heirs, though themselves free from disqualifying defects like impotence, may be unworthy of getting the estate of their grandfather, Devala says: "Their sons being free from defect obtain their father's share of the heritage." 'Their sons' *i.e.* sons of disqualified heirs, when they are free from defects like impotence which exclude from inheritance, obtain their father's share of the heritage *i.e.* share of the estate of their grandfather. It should not be said that from this text it follows that the son of the outcast is entitled to the estate of the grandfather, because 'their sons' are mentioned generally, inasmuch as he is excluded by the qualification 'being free from defect.' The son of the outcast is also outcast, as says Vasista: "The issue of an outcast are also outcast, except a female, for she goes to another family"

Sons born after degradation and of wives of higher caste etc excluded.

12. Like the son of the outcast, the son of a wife of a higher caste is not entitled to the grandfather's estate, because of a defect disqualifying from inheritance. So says Vishnu: "And their legitimate sons receive a share But not the sons of an outcast, provided they were born after the commission of the act on account of which the parents became outcast. Neither do sons begotten on wives of superior castes receive a share. Their sons do not even receive a share of the wealth of their paternal grandfathers." Anantarutpanna means born after. (Those so born) are not entitled to the inheritance, because these words are understood after 'born after.' Similarly incapacity to take the grandfather's estate attaches to the sons of apostates from religious orders and the like, whenever there is a defect excluding from inheritance

Legitimate sons of excluded heirs, if without defect take their father's share, but not Kshetraja sons who are not allowed.

13. Yajnavalkya has said the following about Kshetraja sons: "But their sons (the sons of the impotent, &c) whether legitimate or Kshetraja are entitled to shares, if free from defects." This was applicable on the Dwapara and previous Yugas, as Kshetraja sons are not allowed in the Kali age.

Disqualified legitimate sons of excluded heirs entitled to maintenance.

14. The legitimate sons (of disqualified heirs), if they themselves have disqualifying defects, should be maintained, as is declared by him (Yajnavalkya): "A blind man and a person afflicted with incurable disease and others similarly disqualified must be maintained excluding them, however, from participation." It is not therefore repeated here.

Daughters of excluded heirs must be maintained till marriage and also their chaste wives.

15. But what was not mentioned before is thus declared by him (Yajnavalkya): "Their daughters must be maintained likewise, until they are provided with husbands. Their sonless widows conducting themselves aright must be supported; but such as are unchaste should be expelled; and so indeed should those who are perverse." 'Daughters' here means unmarried daughters. 'Their' means 'of the disqualified heirs.' 'Must be maintained,' *i.e.*, by the heirs who take the property of the excluded son, in the manner in which disqualified heirs have been enjoined to be maintained, for life. A qualification maintain cases to the rule of maintenance for life, is mentioned, by saying in case of daughters, "until they are provided with husbands." The meaning of this qualification is, until they are married.

Unchaste wives not to be expelled but to be maintained.

16. (This meaning is) that the sonless wives, *i.e.*, married wives of these excluded heirs, who are of good conduct, should be maintained by those who take the estate of the father of the disqualified heir, in the manner in which disqualified heirs should be maintained. Such of their wives as are unchaste or hostile towards their husbands should be expelled from the house. Thus the unchaste should be expelled and not maintained, but those that are hostile to their husbands should be expelled but should be maintained.

CHAPTER VI.

DETERMINATION OF PROPERTY LIABLE TO PARTITION.

Partible property.

1. On the above subject, Katyayana says: "Whatever is inherited from the grandfather or from the father or is self-acquired, all that should be divided at a partition among heirs." Self-acquired (here) means acquired by using the undivided wealth, like the paternal property, because what is acquired without using such wealth, is not liable to partition. All the three kinds of property (mentioned in the text) should be divided; it being understood, when there is no debt incurred by the grandfather and the like. If there be such debt, not the whole property but what remains, after paying the debts, should be divided. So says he (Katyayana): "But having paid the debts and given affectionate gifts (promised by the father) out of the heritage, the residue should be divided." Pritipradanam means what is given

out of affection. By saying the residue should be divided, it is indicated that this applies to the case, where the partible property is considerable. When the estate is inconsiderable, it has been shown in the chapter on partition, after father's decease, the debts should be divided in the same manner as effects.

Debts how ascertained

2 In order to ascertain the truth of the existence of the debts payable, he (Katyayana) says that the heirs should have them examined in the presence of kinsmen · "Such kinds of debts, which should be examined (by the heirs) on partition, in the presence of kinsmen" In order to prevent fraud, the assets should also be properly examined So says he (Katyayana) : "Household furniture, beasts of burden, milch cows, ornaments and workmen, that are visible, should be divided ; and in case of concealment, Bhrigu ordains the *Kosha* (ordeal for discovery)." Workmen means servants, slaves and the like Bhrigu has ordained the ordeal of *Kosha*, when there is doubt of fraud by concealment of property. So he says . "When there is doubt of fraud by concealment of property, there should be an ordeal" *Pratyaya* means ordeal *i e.* of the description called *Kosha*, as mentioned before Vrihaspati also says that is the ordeal in such cases "Household furniture, beasts of burden, milch cows, ornaments, workmen, that are visible, should be divided ; and in case of concealment Bhrigu has prescribed the *Kosha* ordeal" It should not be said that the word *Kosha* here includes all kinds of ordeal. In the work of Katyayana on the subject of partition, when it is laid down : "when there is suspicion of bad faith in partition among heirs, though there may be many kinds of evidence, the *Kosha* should be prescribed," still it is mentioned (in the text mentioned before) in order to show that only the ordeal named *Kosha* is prescribed Therefore in the text of Vrihaspati the ordeal means the special ordeal called *Kosha*.

CHAPTER VII.

ON PROPERTY NOT LIABLE TO PARTITION

Property not liable to partition.

1. On this above subject, Vyasa says : "Whatever is gained by learning and wealth acquired by valour and the affectionate gifts from kindred to women shall not be claimed by the co-heirs."

Gains of learning.

2. 'Gained by learning' does not mean all gains of science but gains acquired in the particular manner mentioned by Katyayana thus: "What has been acquired by learning after instructions received from a third party and getting maintenance from a stranger is called gains of learning." 'A stranger' means a person, who is not a member of the same undivided family. 'Maintenance' means property generally, required for subsistence. The causes of acquiring wealth by learning of the above description are manifold and the wealth acquired on account of difference in the cause of acquisition is also of different kinds. All that is thus indivisible is described concisely by Vyasa by the word 'gained by learning.'

3. To define the meaning of the above word more fully in detail, Katyayana says: "What is gained by proving superior learning after a prize has been offered (by a third person) must be considered as the gains of learning and ought not to be divided (among coparceners). What has been obtained from a pupil or by officiating as a priest or for answering a question or for determining a doubtful point or through display of knowledge or by success in disputation or for superior skill in learning, the sages have declared as the gains of learning, and not subject to distribution. What is won by learning after a stake has been deposited, is gains of learning according to Vrihaspati. What is obtained by the boast of learning, what is received from a pupil and what is received by officiating as a priest are gains of learning according to Bhrigu. The same rule likewise, applies to the arts and to increase of price from superior skill in them. A prize gained which had been offered for the display of superior learning and a gift received from a person (for whom a sacrifice had been previously performed) or a present from a pupil (previously instructed) have been declared to be gains of learning. What is otherwise acquired is common to all co-heirs."

'By proving superior learning' means by proving wonderful power in verbal disputations and the like. 'From a pupil' means by teaching. 'By officiating as a priest' means officiating at a sacrifice. 'For answering a question' means for answering a question for determining the mode of expiating a minor grave offence. 'For determining a doubtful point' means for determining a point in issue after hearing both sides of it. 'Through display of knowledge' means by displaying one's knowledge for getting priority in honor. 'By disputation' means by means of modes of argument for refuting the adversary's position and asserting one's own and the like. 'For superior skill in reading' means for completing recitation of parts of the

Veda within appointed hours. 'What has been won by learning' means by winning through knowledge of incontations like Aksha Hridaya and the like. 'By boast learning' means by boast of superiority on account of great learning. 'Received from a pupil' means received as a mark of honor to a teacher. 'For officiating as priest' means for watching the due performance of a sacrifice 'To the arts' means to acquisitions by knowledge in arts 'The same rule' *i.e.* the law about the impartibility of gains of learning applies. 'From increase' means from increase of wages or salary in teaching 'From superiority in learning' means the superior presents received for superior learning. 'A gift in a sacrifice or from a pupil' means such a gift in the performance of a ceremony. All such gains are called by the particular name 'gains of learning' Property other than these gains of learning acquired by the help of undivided wealth, paternal and the like, is common property of undivided coparceners and is divisible The rest of the text (of Katyayana) is clear.

Gains of learning which are divisible.

4. Narada also thus describes gains of learning which are common: "When one brother maintains the family of another brother, who is engaged in studying science, he shall receive a share of the wealth gained by that study, though he be without learning" This is to show the divisible character of the gains of learning acquired with the help of joint property. Asruta (here) means without learning. This is the meaning. Thus the gains of learning derived from undivided father and the like are divisible. So says Katyayana: "of brothers such as have received education in the family or from the father, the gains of learning, as well as what is gained by valour, are divisible according to Vrihaspati." The meaning is that Vrihaspati has declared that in a joint family, of one who received his instruction from the paternal uncle and the like or from the father, the property acquired by valour or by learning, is gains of learning which is divisible.

Acquirer's double share.

5. In divisible gains of learning the acquirer gets a larger share from the text of Vasista: "If one (of the brothers) has himself acquired something, he gets a double share (in it)." Gautama, however, allows in some cases the allotment of shares to co-heirs at the pleasure of the acquirer, even in such gains of learning as are impartible: "What a learned (coparcener) has acquired by his own efforts, he may (at his pleasure) share with unlearned coparceners." 'Vaidya' here means learned. Narada also says that when the acquirer does not desire, he need not give a share: "A

learned man is not bound to give a share of his own (acquired) wealth against his will to an unlearned co-heir, unless it have been gained by him using the paternal estate." The words 'own wealth' in the first hemistich though mentioned generally, mean such wealth gained by learning, from the succeeding hemistich. To the unlearned, even when one is desirous, he should not give a share, so says Katyayana: "Never shall a learned man give wealth acquired by learning to the unlearned, but to those who are equal or superior in learning. (share of) that wealth should be given by the learned man." Never shall give to the unlearned in the text means never shall give even when one is willing. This is the meaning.

Gains of valour

6. Gains of valour are thus defined by him (Katyayana): "When (a soldier) performs a gallant violent action despising danger and favour is shown to him by his master pleased with that action; whatever property is thus received by him shall be considered as gains of valour." The word Proshova in the text means violent He also decribes another kind of impartible property thus: "What is taken under a standard is declared not subject to distribution" He thus defines 'what is taken under a standard:' "What is seized in war after risking one's life for his master and routing the forces of the enemy is called sport taken under a standard." This is included by Vyasa within the meaning of the word valour. As it is of a special character, Katyayana mentions it separately by way of amplification

Here also, it must be understood that to render the acquisition impartible, it is necessary that it should have been, like wealth gained by learning, acquired without the use of the undivided wealth of the father and the like. Vyasa therefore says that wealth acquired with the use of such wealth should be unequally divided: "When property is acquired by valour and the like with the aid of any common property such as a conveyance or a weapon, therein the brothers are sharers. To him (the acquirer) two shares are to be given, the rest are equal sharers." Common means undivided property. The word brothers here indicate jointness. 'To him' means to the person who acquires with the help of common property.

Wealth received at marriage indivisible.

7. By mentioning 'by valour and the like' it is indicated that other kinds of acquisitions, such as what is obtained with a damsel or on account of marriage and the like, received in marriage performed with joint funds. are also divisible. Katyayana thus defines property received with the bride and what is obtained on account of marriage: "Whatever is gained with a damsel of the same caste at the time of her

being given away is wealth obtained with a damsel which is pure and causes prosperity. That is known as obtained on account of marriage, which comes with the wife. All this kind of wealth is known as fit for (separate) works of merit." The word Kanyagata means obtained with a maiden

8. He (Katyayana) also thus declares the indivisibility of all kinds of Stridhana: "Wealth acquired by valour and learning, as also Stridhana: all this should not be shared by the co-parceners at partition"

Stridhana indivisible.

9. Vrihaspati also defines what should not be partitioned: "Whatever has been given by the grandfather, the father or the mother to a co-parcener and the wealth acquired by valour, as well as the wealth of the wife, should not be taken by the co-heirs" Narada makes a distinction in respect of gift by the mother thus: "When the mother has bestowed a portion of her property on any one of her sons from affection, this rule applies in that case also, for the mother is equal to the father, (as regards her competence to give)" 'In her own peculiar property' should be understood here. 'This rule' means the rule regarding gift by the father.

Gift from grandfather and parents indivisible.

10. Thus gifts from friends also are not divisible, as says Yajnavalkya: "Whatever else is acquired by the coparcener himself without detriment to the father's estate, as a present from a friend or a gift at nuptials, does not appertain to the co-heirs" Manu declares the indivisibility of presents with the honey-mixture thus "Likewise the gift of a friend, a present received on marriage or with the honey-mixture"

Gifts from friends indivisible.

11. 'Whatever else is acquired by the coparcener himself without detriment to the father's estate': the meaning of this passage is made clear by Manu thus: "What one (brother) may acquire by his labour without prejudice to the father's estate" In both texts the use of the word father signifies jointness 'By labour' means by agriculture and the like requiring labour. 'Without prejudice' means without detriment. Vyasa also says: "Whatever property is acquired by one's own exertions without making use of the father's property shall not be given to the co-heirs" 'Without making use' means without using for the purpose of acquiring The use of the word father here also signifies jointness Prajapati also says: "Wealth gained by science, valour or labour, a present with the honey-mixture, a present from a friend or a gift in marriage, of a brother should not be shared by the other brothers." Labour means agriculture and the like.

Self-acquired property in general when indivisible.

12. Likewise, where one, by his own efforts recovers ancestral property and which had been seized by others, he shall not share with the co-heirs, it being declared by Yajnavalkya : "Nor shall he who recovers hereditary property which had been taken away, give it up to the parceners." Property means property other than land.

Ancestral property recovered.

Regarding landed property, Sankha says : "Land (inherited) in regular succession but which had been formerly lost and which a single heir shall recover, the rest may divide according to their due allotments, having first given him a fourth part."

The meaning of this text is, whoever among the sons, grandsons and the like shall recover, by his own exertions, lands descended in regular succession, and which had been formerly lost, that is, seized by others, one-fourth share of such property is to be given to him, and the rest is to be divided by the other brothers together with the recoverer. Some, however, think that this text of Sankha is applicable to the case of land and all other property recovered by one without permission from the other co-heirs (by saying) : You take what you may recover. They also say that the text of Yajnavalkya refers to land and every other kind of property recovered with such permission. (Of these opinions,) that which is reasonable may be adopted.

On the subject of recovering land or other property seized by others, Vyasa says, as follows : "Where a co-heir exerts, whether a partition has or has not taken place, and recovers common property, he takes a share." The meaning of this passage is, that the co-heir who recovers partible property seized by others, takes a double share in such property.

13. Manu enumerates other things exempt from partition A dress, a bond, ornaments, prepared food, water, women, (property destined for) sacrifices and pious acts, (yoga-kshema), and the pasture ground (pracharam), they declare to be indivisible.

Other impartible property.

A dress means cloth worn by undivided members ; Katyayana having declared "Clothes are those which are worn on the body."

Bond means debt secured by written instruments ; he (Katyayana) having made it clear by saying : 'property founded on a (patram) written instrument.' Women means female slaves. Water means water contained in a pond or well situated in one's own house. Yoga-kshema has been explained by Laugakshi, as follows ; "The learned have named a conservatory act *kshema*, and a sacrificial one *yoga*. These are pronounced indivisible." Or the term "yoga-kshema" may be said to denote that gain which the co-heirs

may derive by the service of a powerful person in the performance of yoga-kshema.

Prachara means ground designed for the grazing of cattle ; Katyayana having distinctly stated : "Pasture ground for kine." Or the word "prachara" may be considered to denote "anganam" (an open space in a house) or the like used for entrance and exit.

'Declare' means some in considerate writers of Smritis declare in divideable.

Therefore Vrihaspati says : "They, by whom cloths and the like are declared impartible, have not considered that on cloths and ornaments depend the wealth among opulent men. These must, therefore, be divided in some skilful mode ; else they would be useless."

If (for instance) there be but one cloth dividing it by tearing into pieces would lead to the destruction of the thing itself (A similar mode of partition) would lead to the destruction of evidence in the case of valuable securities Where there is a large quantity of prepared food to be divided, there would be waste of such part of it as should fall to the share of one who requires but a little quantity to eat. As for a well and the like, a division of them is impracticable. Thus though it would appear that these things are impartible, still such a rational mode must be adopted in the distribution of them as would obviate the destruction of the things themselves ; otherwise if they be allowed to remain in common, it is clear that, where from motives of malice, obstruction is thrown by one in the way of their enjoyment by the others, the things themselves would be useless, no one being able to enjoy them.

The same author (Vrihaspati) therefore describes the rational mode of distribution of the above things in the following passage : "clothes and ornaments by sale, a bond by recovering the debt due, by compensating the dressed food with undressed grain, an equitable partition is made. Water drawn from a single pool or well shall be taken according to need. Let a single female slave be successively employed by co-heirs in their respective houses, according to share. If there are many, they shall be distributed in equal allotments. The same rule applies also to male servants. The benefit received from *yoga-kshema* shall be equally shared, and the pasture ground for cattle shall also be always used by the co-heirs in proportion to their shares."

A bond by recovery means by realizing the debt from the debtor. According to share means in proportion to the share of each.

Usana states : "Sacrificial gains, land, securities, prepared food, water, and women are indivisible among those of the same Gotra even to the thousandth degree." This

text is, however, to be overlooked, and the sacrificial gains and land are to be divided in a rational manner. Gains derived from sacrifices are divisible. Land is to be divided with the assent of all the co-heirs ; Prajapati having declared : "Whatever act is done in respect of immoveable property without the consent of the co-heirs, is to be considered as not done, where even one of the co-heirs does not consent to it." Again when he (Prajapati) says : "Partition does not take place of house, lands, sacrificial gains and also of what has been given by a father or a mother through affection" the prohibition against division is, to be overlooked, and houses and the like are to be equitably divided in the manner mentioned before. Accordingly, Katyayana, in the passage : "visible property house, land, and quadrupeds are to be divided," expressly permits the partition of house, &c

Likewise, the prohibition against the division of what has been given by a father through affection is also to be disregarded in the case of property other than immoveable ; it being declared by Vriddha Yajnavalkya : "By the affectionate gift of the father, the cloths and ornaments are gained, but immoveable property is not gained even with the father's indulgence."

Again, the same author states : "No one is competent to make a partition even of the inheritance descended from ancestors. It is simply to be enjoyed ; there can be no gift or sale of the same."

By the particle "*api*" (even) after the words "to make a partition," it is shewn that not even the father or the like is competent to make a sale and the like of property descended from ancestors.

Therefore no partition, sale, or pledge should be made of hereditary immoveable property, except with the assent of the co-heirs.

CHAPTER VIII.

ALLOTMENT OF SHARES OF SONS AND GRANDSONS.

Grandsons take father's share.

1. Now something should be said on the subject of allotment of shares of sons, grandsons and the like. Yajnavalkya says : "Among those whose fathers are deceased, the allotment of shares is according to the fathers." Among brothers whose fathers have died undivided the allotment of shares is according to the fathers. The division of property left by the grandfather and great-grandfather is to be adjusted with reference to their respective fathers and not with reference to themselves.

2. If it be asked what difference does a partition make it made through fathers, Vrihaspati answers: "Their sons whether of unequal or equal number are declared to take the shares of their respective fathers." The meaning is, that where the sons of the deceased fathers are of unequal or equal number, that is, of greater or less number, the sons take the shares of their respective fathers For example: when one has a single son, another two, and a third many, the only son receives one share of his father, the two sons take one share of their father, and similarly the many sons obtain the one share of their father. Although, the adjustment of shares through fathers, might lead to inequality in the shares of sons by different fathers, yet it must be approved on the strength of texts.

3. Where, among undivided brothers having sons, one dies, and his son has received no share from his grandfather, and the grandfather also dies, Katyayana says: "Should a brother (anuja) die before partition, his share shall be allotted to his son, provided he has received no fortune from his grandfather; a son's son shall receive his father's share from his uncle or from his uncle's son"

"Fortune" means heritage The term "anuja" has been used in the text to denote a brother generally

4. Where there are many sons of the deceased, the same author states: "The same share shall be allotted equitably to all the brothers." It means that the same share shall be divided in equal shares among all the sons according to the rule of Nyaya. "Equality is the rule where the contrary has not been heard"

Greatgrandsons are entitled to take the share of their great grandfathers.

5. The same author further states: "Or (if that grandson be also dead), let his son take the share; beyond him succession stops." The meaning of it is, that the son of the grandson of owner of the divisible property takes, in default of his father, the share of his father. Where there is no such son too (*i.e.* son of the grandson), but his sons are in existence, the descendants of the deceased brother, do not take a share in the property of their great-great-grandfather.

The objection against great-grandsons considered.

6. The objector asks how does a great-grandson take a share in his great-grandfather's property, the right by birth being ordained by law only of the son and grandson in the property of the father and the grandfather This is true, but a great-grandson has been declared entitled to his great-grandfather's property, just on the same principle on which a son and the like have been declared entitled to their mother's property on her death *i.e.* because they offer funeral oblations to her. Thus it has

hence been properly declared: "Or let his son take the share."

Thus it must be understood that whoever, by reason of the deceased proprietor being related to him as father, grandfather, or great-grandfather, offers funeral oblations to him, becomes entitled to participate in his (deceased's) property notwithstanding that the deceased proprietor has got other descendants

Great grandsons takes on the ground of spiritual benefit.

7. Therefore Devala says: "Sages declare partition of heritable property to be coordinate with the gifts of funeral cakes."

The meaning is, that Manu and other sages contemplate the partition of inheritance as well as the presentation of funeral oblations up to the fourth in descent.

Accordingly, the same author says: "Partition among parceners having undivided wealth [avibhaktavibhaktanam], and being members of the same family, and who have long lived together, shall extend to the fourth in descent. This is a settled rule. So far, [*i e* as far as the fourth in descent], kinsmen are sapindas. Beyond this, a difference occurs in Pinda."

Avibhaktavibhaktanam *i.e.* among persons joint in estate, belonging to the same family but sprung from different branches, who have resided together for a considerable period, partition shall extend to the fourth in descent *i.e.* it shall be allowed as far as the great-grandson of the deceased owner. This is the limit of the rule of partition of heritage among parceners sprung from different branches of the same family.

Grandson's right to partition.

8. If it be asked how, in the case of one whose father is alive, he obtains partition of his (deceased) grandfather's property with his father, Katyayana says: "In grand paternal property father and son have equal rights" Vyasa too says: "A father and his sons are entitled to share equally the house and land descended from ancestors." Vrihaspati, also says: "In property acquired by the grandfather, whether moveable or immoveable, the father and the son are declared to be entitled to equal shares."

Yajnavalkya, also says: "The ownership of father and son is the same in land, which was acquired by the grandfather or in a Nibandha or in a chattel which belonged to him."

A Nibandha signifies a permanent allowance received from saleable articles, fixed by an agreement. The expression "The ownership of father and son is the same," must be understood to mean that a father and a son shall have equal shares. Otherwise, the passage cannot agree with the texts previously quoted.

9. Thus even in a partition during the lifetime of the father, an unequal partition could never be resorted to in the case of the wealth of the grandfather or the like; but, with regard to self-acquired property, it has been pointed out in the chapter treating of partition during lifetime of the father, that unequal partition prevailed in some instances in former ages

Grandson has equal right with his father and can compel partition and prevent alienation.

10. Some say that the text should be literally construed and thus there may be partition of the grandpaternal property at the desire of the grandson alone and there cannot be any gift or the like of ancestral property at the pleasure of the father only, because of the mention of the equality of the ownership of the grandson. Such a construction is correct and acceptable.

Difference in the right of the son in father's property.

11. Vishnu also has declared, "In grandpaternal property also, the ownership of the father and the son is equal" From the tenor of the text it is clear that in father's own property, the ownership of the father and the son is not equal. But it is objected that ownership accrues by birth, in both paternal and grandpaternal property and thus how can there be any question of equality? (The answer is) that in grandpaternal property, there is equality both in ownership and in independent power. But in the property of the father, when he is faultless and living, he alone has independent power of disposal. Because of this difference, equality and inequality in ownership are mentioned As regards the text of Katyayana: "but in self-acquired property of the father the son has no ownership" it only declares by a peculiar mode of expression that in father's property, there is no right of the son to partition at his will and should not be literally construed. This is faultless. Vyasa says this clearly: "In father's property, the sons have not the right to partition against the father's will."

Again in the text of Vrihaspati: "in grandpaternal property seized by strangers which is recovered by the father by his own efforts and what is acquired by learning, valour in arms etc., the father's ownership has been declared" it is meant by a peculiar mode of expression that the father has only independent power of disposal over such property

Father's power over self-acquired property.

12. He (Vrihaspati) also gives the object of the mention of the father's having such independent power, in the text: "He may make a gift out of that property or even consume it at his will. But in his default, the sons are pronounced to be equal sharers." The meaning is that on the strength of the

father's independent power, without the son's consent, there can be gift and the like in the particular matters mentioned in the chapter on partition during father's lifetime and also unequal division at the father's will. By a peculiar mode of expression, Katyayana declares that in ancestral property, which is like self-acquired property (having been recovered by the father) and also in property acquired by the father, the sons cannot compel a partition, in the text : "Ancestral property which had been seized by others or lost and since recovered by the father by his own efforts, as well as property acquired by the father himself, in all this the father cannot be compelled to give a share to the sons in partition."

What had been seized by others *i e.* ancestral property that had been seized by strangers and recovered by his own efforts, or what was lost and recovered by himself, and also what has been acquired by himself by valour and the like, the father in partition cannot be compelled by the sons to give them. This is the construction.

CHAPTER IX.

SECTION I.

ON THE DIFFERENT KINDS OF STRIDHANA.

The six-fold Stridhana of Manu

1. On this matter in the first place Manu describes the different kinds of Stridhana (thus) : "What (was given) before the (nuptial) fire, what (was given) on the bridal procession, what was given in taken of love and what was received from her brother, mother or father, that is called the six-fold property of a woman." Of this text the first hemistich is explained in detail by Katyayana thus : "Whatever is given to women at the time of their marriage before the sacred fire is denominated by sages the property given before the nuptial fire. What a woman receives while she is carried from her parental abode to the house of her husband is called the property of a woman given at the bridal procession. Whatever is given through affection by the mother-in-law or by the father-in-law on the occasion of her salutation by touching the feet is called the affectionate present." 'What was received from brother, mother or father' in (the Manu's text) (means received from them) at any time for her support.

Manu's enumeration not exhaustive. Other kinds mentioned.

2. The word six-fold has been used to avoid the mistake of supposing that Stridhana is of one kind only and not to fix the number. Therefore in the text : "What was given to a woman by the father, the mother, the husband or a brother or received by her at

the nuptial fire or presented to her on her husbands' marriage to another wife, and the like beginning with them are denominated a woman's property," the words 'beginning with them' are used by Yajnavalkya. Vishnu enumerates more than six thus: "What has been given to a woman by her father, mother, sons or brothers, what she has received before the nuptial fire, what she has received on supersession, what has been given to her by relatives, her fee (Sulka) and a gift subsequent (Anvadheya) are called woman's property." Adhivedanika means received on account of supersession. 'Relatives' (in the text) mean other than father etc. mentioned before on the analogy of the phrase 'beeves and oxen' Katyayana thus defines Sulka and Anvadheya: "Whatever is received as the price of household utensils, beasts of burden, milch cows, ornaments or for works or what little is received is called Sulka. What has been received by a woman after marriage from the husband's family or from the husband or parents, Bhrigu has declared as 'gift subsequent'." 'Price' (in the text) means price of household utensils etc 'Received' means received from the bridegroom and the like by way of bride's wealth and as appropriated for the bride.

Wealth not more than 2000 a year should be given to a woman for her support

3. In the matter of gift for support by father, mother and the like, he (Katyayana) mentions a limitation: "To a woman should be given Stridhana (for her support) up to two thousand, according to ability, by her father, mother, husband, brother and kindred, but not immoveable property." The meaning is that according to ability excepting immoveables, two thousand *i.e.* up to two thousand Karshapanas should be given Vyasa also says: "Of the wealth up to two thousand of the Daya should be given to the wife" Daya means what is given Para means the extreme limit. Thus a portion of the property which is of value more than two thousand Karshapanas should not be given even in the case of the wealthy, for the support of a woman. 'Should be given' here means should be given every year, because the text mentions only such amount as is required and is sufficient for that period only. Therefore this rule refers to annual payment. Where however a payment is made for maintenance for several years, the limit as to the amount and the prohibition of gift of immoveable property has no application.

Ornaments conditionally given and fraudulent gifts not Stridhana.

4. Ornaments given on condition that they are to be worn on festive occasions and property given with the object of defrauding the co-heirs cannot be Stridhana, as says Katyayana thus: "But whatever has been given conditionally or with the object of defrauding, by father

brother or husband cannot be Stridhana" Yogabashena means with the object of defrauding and the like.

Even Stridhana should be spent with the husband's permission.

5 An objection may be raised that, even in the absence of being conditional or fraudulent, a gift by father and the like cannot be Stridhana from the text (of Manu): "A wife, a son and a slave, these three are declared to have no property Whatever they acquire becomes the property of him to whom they belong" This is not correct, inasmuch as the wife is mentioned together with the son (who is not incapable of owning property), her incapacity to own property is not intended but only her dependence in the matter of spending wealth and the like. The meaning of the text is that the above named persons can spend their own wealth with the permission of him to whom they belong. Therefore Manu says: "Women should never make expenditure out of the property of the family, which consists of many, or out of their own wealth without the permission of the husband." The meaning is that women because they are dependent, cannot, of their own independent power, make alienations or use or the like, out of the property common to wife and husband or out of their own property.

Property received from friends and others belongs to the husband.

6. Or this text about the incapacity of women to own property, applies to wealth acquired by mechanical arts and the like, as says Katyayana in the text: "Whatever property is acquired by mechanical arts or through affection from another, belongs to the husband; but the rest is considered Stridhana." 'From another' in the text means that property received from a friend and the like has not been specifically mentioned as Stridhana (in the Smritis).

CHAPTER IX.

SECTION II.

ON THE INCIDENTS OF STRIDHANA.

Power over Saudayika and husband's gifts.

1. On this matter Vyasa says: "Such property also, as is given by her husband, she may enjoy according to her pleasure." By the mention of 'also' it is meant that Saudayika also may be enjoyed at pleasure. By saying 'according to her pleasure' the independent power over gifts by the husband is shown. Katyayana also says: "The independence of women who have received Saudayika gifts is declared in such property; for it is given by the kindred

for their support, in order to avoid sin. The power of women over Saudayika property always is declared both in respect to sale and gift, according to their pleasure, even in the case of immoveables. The husband's gift a woman may deal with according to her pleasure, when the husband is dead; but when he is alive, she shall carefully preserve it, or commit to the care of his family, if she is unable to do so." In the second verse by the mention of the word 'always' the power over Saudayika property even during husband's lifetime is declared. Bhartridaya means husband's gift. In that by the succeeding three *padas* of the verse, after the death of the husband, a woman's independent power is declared, inasmuch as it is said that she should preserve it during his lifetime. 'Preserve it' means should not dispose of wealth given by the husband without his permission.

Definition of Saudayika.

2. Saudayika is thus defined by him (Katyayana): "By a married woman or by a maiden, (whatever is) received from the husband's or in the father's house from the brother or from the parents is called Saudayika" 'Received' *i. e.* property which is received. So also says Vyasa: "That property which is received by a maiden at her marriage or afterwards, from her father's or husband's house, is termed Saudayika." By these two texts it is meant that whatever property Yautaka and the like that is received by a woman during the time beginning with betrothal and ending with the festivities at the time of entering the husband's house, in the father's house or in the husband's house from the father's family is termed Saudayika. But as regards the word Saudayika how is it used here, while in the Nighantoo we read 'whatever is given to a woman by way of provision for her support is Sudaya?' The word is made by the addition of the affix *ika* which does not change the meaning. Thus it is unobjectionable.

No independent power over immoveable property given by the husband.

3. But in husband's gift when it is immoveable property, on the death of the husband, (the widow) has no independent power. So says Narada: "What has been given to a wife by her loving husband she may spend or give away as she likes, after his death even, excepting immoveables." On the death of the husband, there is no independent power of disposal over his immoveable property (given to her). By the mention of 'as she likes,' independent power is meant. Thus in Saudayika and in property given by the husband, excepting the immoveable, women have independent power of disposal, but in other Stridhana property there is no such independence. This should be understood.

4. Men, husbands and the like, have no independent power of disposal over all kinds of Stridhana, as Katyayana says: "Neither the husband, nor the son, nor the father, have power to give away Stridhana;" that is, on account of want of ownership. Therefore he (Katyayana) thereafter says: "if any of these persons by force consume woman's property, he shall be compelled to make it good with interest and shall be punished. If it is consumed with permission given out of affection, the principal should be returned if he becomes rich." From the words 'if he becomes rich,' it follows that a poor man need not be compelled to repay.

If husband consumes Stridhana, he must repay.

5. When it is said (in the abovementioned text) that even when Stridhana is used with permission, the principal has to be returned, it follows that the husband and the like have no kind of ownership in Stridhana and not that they have merely no independent power over them. Thus a wife has by reason of marriage, on her husband's property ownership, though it is always of a dependent character; but in wife's property, the husband has no such right: this is the conclusion. Therefore Devala declares the incapacity of the husband to enjoy wife's property thus: "Britti or property given for maintenance, ornaments, property given to the bride by the husband for marriage and wealth gained are declared Stridhana. She exclusively enjoys it. Her husband has no power to use it, except in distress. Where Stridhana is needlessly alienated or enjoyed by the husband, it is returnable with interest to the wife." Britti means property given for maintenance by father and the like: That which is gained is 'wealth gained.' Thus it may be said that whatever is obtained by a woman in *Bratas* for pleasing the goddess Parvati and the like, is also Stridhana. The words 'she herself' are used to exclude even her own children. The exclusion of the husband is established by the words "the husband has no right, &c." By the exclusion of the husband is established the exclusion of more distant relatives like the brother, by the analogy of the loaf and the staff, (*i.e.*, as loaves through which a staff is thrust are necessarily brought, when the staff is brought). 'Needlessly' means when there is no distress. 'Alienated' means parted with. (The text) refers to enjoyment (by the husband) without the wife's permission but without force, because when repayment with interest is enjoined, there is no mention of any punishment. By saying 'the husband has power except in distress' it is indicated that the husband has power to make use of Stridhana in distress but not any other person. There-

Wife has ownership in husband's property but not the husband in wife's.

fore in the subsequent text : "has power to appropriate Stridhana for the relief of a son," the word husband is understood. The word 'son' is symbolical of members of the family. Distress means such distress which on account of want of wealth is difficult to relieve. The word *Harane* means 'for the relief of.' The word 'or' indicates that on other occasions of extreme danger from which one cannot be extricated without wealth, the husband can use the wife's property without her permission But how can there be competence to alienate or use another person's property without the owner's permission? Even without the owner's permission in matters mentioned before, in the property of the wife, which she can dispose of as she like, (but) which is owned by her as a person dependent on one's self, for the purpose of being relieved of distress, there is competence to alienate or use, from the text aforesaid Thus there is no fault On this Yagnavalkya says ; "A husband is not liable to make good the property of his wife taken by him in a famine or for the performance of religious works or during illness or while under restraint" 'For the performance of religious works' (means for the performance of duties) daily or occasional or even works performed with hope of temporal reward and sometimes even propitiatory ceremonies like sacrifices to (maleficent) planets While under restraint' means while under the coercion of creditors and the like which cannot be avoided without paying money. 'Taken by him' means taken when there is no other alternative, because when there are means, money so taken must be returned Therefore Katyayana declares the necessity of repayment under some circumstances thus : "Whatever she has out of affection put into the hands of her husband knowing him to be afflicted by disease, or in distress or sorely pressed by creditors, he should repay at his pleasure." 'Knowing' means when known by the wife.

Though this text as it comes after the text : 'neither the husband nor the son,' &c., seems to refer to husband and others, still it should be understood to refer to the husband alone from a consideration of the subsequent texts (to the effect :) "But if the husband have a second wife and do not care for the first wife, he shall be compelled to restore the property, though given to him out of affection. If suitable food, raiment and residence be withheld from women, they may exact their own Stridhana"

When however, the wife is very wicked, she is not entitled to enjoy her own property, even when not given by her. So says he (Katyayana) : "But a wife who does injurious acts, is shameless or wastes property or is unchaste, does not deserve Stridhana," *i.e*, to dispose of it at her pleasure, which should be considered as understood.

Stridhana promised by the husband must be given by son and grandson.

6. What has been promised by the husband but not taken by the wife should be paid to her, because it is declared by him (Katyayana thus): "The Stridhana promised by the husband should be paid by the sons as a debt (of his)." The word 'sons' here is symbolical of male descendants up to the grandson, because of the mention of 'should be paid as a debt' (which male descendants up to the grandson are liable to pay). From this also it is deducible that sons and the like have no right to the Stridhana (of the mother). Therefore, during the lifetime of a woman, no one has any share, because in her property she has exclusive ownership. Therefore, Manu says: "Their kinsmen who take their property in their lifetime, a virtuous king should chastise by inflicting the punishment for theft. The ornaments which may have been worn by women during their husband's lifetime, his heirs shall not divide. Those who divide them become outcasts." 'Worn' here means worn exclusively by her. In what is worn exclusively by a woman, there can be no supposition of fraud or conditional gift for an occasion and (such or ornaments) are of a certainty Stridhana. As the first hemistich (of the second verse) may include both certain and uncertain Stridhana, it must be understood that the qualification of exclusive wearing constitutes Stridhana. 'Heirs' mean daughter and others.

CHAPTER IX.

SECTION III.

SUCCESSION TO WOMAN'S PROPERTY.

Succession to Anvadheya and Pritidatta taken by son and daughter.

1. On this subject, Manu thus lays down the rule of succession: "(Such property), as well as a gift subsequent, and what was given by her husband out of affection shall go to her offspring, (even) if she dies in the lifetime of her husband." Gift subsequent is what is received by a woman after her marriage from her husband's and father's family, from the text of Katyayana: "Whatever is received by a woman after marriage from the husband's family is Anvadheya, as also what is similarly received from her father's family." The words 'after marriage,' embody the meaning of the prefix *Anu* in the word Anvadheya. The word 'received' embodies the meaning of the word *Adheya*. This should be understood. The gift subsequent and husband's gift out of affection, these two kinds of Stridhana, the surviving male and female

children of the owner take. This is the meaning. It should be mentioned here that the Stridhana of a woman having children never goes to her husband, even if he survives her but to her children.

Survival the cause of inheritance

2. From the above it is deducible that after the death of the owner, survival is the cause of devolution of property and is thus the cause of accrual of right to property recognised by the Law. Therefore, wherever there is devolution of property after the death of the owner, in respect of inheritance to the property of the sonless deceased person, this is the cause of accrual of the right of the heirs.

Son and daughter take simultaneously Anvadheya and Pritidatta.

3. By the use of the common term 'offspring' in the text, it is meant that the right of the inheritance to the aforesaid two kinds of property accrues simultaneously to both male and female children and their ownership also accrues at the same time and not that the sisters take first and in their default the brothers. Partition here should be understood as taking place between brothers and sisters. Thus again, it should be understood that the text (of Manu) : "but when the mother has died, all the uterine brothers and sisters shall equally divide the mother's wealth" refers to the two kinds of wealth beginning with the Anvadheya mentioned by him.

Unmarried and married daughters but not widows take Anvadheya and Pritidatta.

4. In this matter, a distinction is mentioned by Vrihaspati thus : "Stridhana goes to the children, and the daughter, if not married, has a share in it. If she is married, she shall receive something as a token of respect only." 'Children' means male children. In both the texts (of Manu and Vrihaspati cited above) the particle *cha* is used to indicate conjunction of one with the other. Therefore here it should be understood that the right to partition belongs to brothers and sisters conjointly. Therefore Katyayana says : "Sisters having husbands shall share with the Bandhavas." 'With the Bandhavas' means with the uterine brothers. The qualification 'having husbands' is for barring widows and not for barring maidens as it will be inconsistent with the text (of Vrihaspati) cited before.

Daughter's daughters get something out of favour.

5. Manu thus speaks with reference to sisters who are sharers with uterine brothers : "Even to the daughters of those (daughters) something should be given according to their deserts, from the estate of their maternal grandmother out of affection." 'According to their deserts' means in consideration of their conduct, necessity, poverty and the like.

6. But how is it said that something should be given to the daughter's daughters when they have no kind of ownership in the grandmother's property, when there are brothers and sisters? Though unmarried daughters have no right of inheritance in paternal property, still one-fourth share has to be given to them by the brothers on the strength of express texts; similarly notwithstanding want of ownership, (daughter's daughters) have to be given something by the brothers and sisters by virtue of express texts. But there is this distinction. In the case of (unmarried daughters), though they are not entitled to the inheritance, they have ownership by birth in it. In this view the necessity of giving is enforced by penalty of not giving by the text: "those who refuse to give shall become outcasts." But in the case of daughter's daughters, in view of the fact that they have no right of ownership, it is said 'out of affection,' *i.e.*, when there is love, it may be paid but when there is none, it need not be paid.

Yautaka goes to the unmarried daughter.

7. He (Manu) declares that another kind of maternal wealth belongs to the unmarried daughter alone and not to all uterine children, thus: "Whatever may be the *Yautaka* of the mother, that is the share of the unmarried daughter alone."

Yautaka defined.

8. Yautaka means wealth made over by any one for the bride and bridegroom while seated together during marriage. Such wealth should be given to the bride and the bridegroom. The author of the Nighantoo says 'belonging to the two joined together is Yautaka.' Therefore the wealth that should be given to the bride and the bridegroom while showing respect to each other, is Yautaka property, because of its etymology, *i.e.*, property belonging to the Yuta or the two joined together is Yautaka. Devaswami, however, says that property received from the father's house is in comparison to property received from the husband's house more distinctly (a woman's) separate property, and that is the Yautaka, which is maternal wealth. This is doubtful as the two kinds distinguished are merely his suppositions.

Daughters take equally.

9. When there are several unmarried daughters, the Yautaka should be divided in accordance with the maxim that equality is the rule, when the contrary is not enjoined, because there is no special share prescribed for any one.

All other Stridhana taken by unmarried and unprovided daughters and not by all daughters.

10. The maternal estate, excepting the three kinds mentioned above, belongs to unmarried daughters and even to unprovided daughters but not to all daughters. So says Gautama: "a woman's separate property goes to her unmarried daughters and also to poor (unprovided married daughters)." Stridhana, denominated Adhyagni, Adhavahanika and

the like become the property of unmarried and unprovided daughters. Such daughters alone divide it, is the meaning. Unprovided means childless, poor or widowed. Thus the text of Gautama has been explained in conformity with the opinion of Aparарka.* The interpretation of this text by Vijnaneswera should be disregarded as it brings in heirs (*i.e.*, all daughters) (without any warrant) on the strength of his own ingenuity alone.

On failure of daughters, daughter's daughters and after them daughter's sons take.

11. Yajnavalkya mentions a further rule on this matter: "The daughters (share) the residue of their mother's property, after payment of her debts." The meaning is that after the death of the mother, after paying her debts, the residue of the maternal estate should be divided by unmarried and unprovided daughters. On failure of such daughters, he (Yajnavalkya) adds: "And the issue succeed in their default." This is made clear by Narada thus: "On failure of daughters, the issue of their husbands take' As unmarried daughters can have no issue, the text should be understood to refer to the issue of the married daughters from the context. It is deducible that as the heritage is one that goes to females, the female issue is meant here But in order that the married daughters' daughters and on failure of female issue, the daughters' sons may take, the common term issue has been used.

After the daughter's sons, sons take and their grandsons.

12. In default of the daughter's sons, from the text of Yajnavalkya · "Let sons divide equally the assets and debts after the demise of the parents," it follows that after the mother's death, the assets of the mother, as well as her debts, are equally divided by the sons (and thus) there is the right of the sons to divide the mother's debts and assets. Otherwise the use of the compound word *pitro* (mother and father) (in the text) "let sons divide, &c.," becomes improper. In default of sons, the grandsons have the right to divide the debts and assets of the grandmother, inasmuch as from (the text of Yajnavalkya), "the debts shall be paid by sons and grandsons" the grandsons have the right to pay the grandmother's debts, (and the text of Gautama says): "the heirs shall pay the debts (of the deceased)."

Grandsons take per stirpes.

13. When there are grandsons by different fathers (*i. e.*, sons) and (the sons of each son) are unequal in number, as in the case of the partition of the grandfather's estate, so in that

* The printed copy of the Aparаrka, which has been reprinted in this volume, does not contain the interpretation mentioned here.

of the partition of the grandmother's estate, the allotment is according to their respective fathers.

Daughter's daughters and daughter's sons take per stirpes.

14. Similarly in the case of daughter's daughters and daughter's sons having different mothers and (the children of each mother) are unequal in number, the children of each daughter together get on partition what their mothers might have got, if living. On the authority of the text of Gautama: "Or let the shares be adjusted in each set (of children) according to their mothers."

Yautaka is taken by sons on failure of daughters.

15. In the text of Ushana: "on failure of daughters, the heritage goes to the sons" 'Daughters' means unmarried daughters, who having no husbands can have no offspring. Katyayana says the same thing and it is applicable to Yautaka property.

Stridhana goes to the husband on failure of issue, if married in approved form.

16. The wealth of the wife on her death, in default of offspring, goes to her husband, from the text of Yajnavalkya: "The property of a childless woman (married) in the form denominated Brahma or even in any of the four (unblamed modes of marriage) goes to her husband." By the word 'even' the form Gandharva is included. Therefore, Manu says: "It is ordained that the property (of a woman married) according to the Brahma, the Daiva, the Arsha, the Gandharva or the Prajapatya rite (shall belong) to her husband alone, if he dies without issue." The meaning is that the wealth of a wife married in any one of the aforesaid five forms, on her death, on failure of her heirs beginning with the daughter and ending with the son's son, belongs to her husband and not to her Bandhus beginning with her brother.

In Asura forms, the parents take after the issue wealth given by them.

17. As regards the text of Katyayana, "what is given by Bandhus in default of Bandhus goes to the husband," it refers to the property of a woman not married in any one of the aforesaid five forms. To that effect he (Katyayana) says: "Whatever paternal wealth is received as Stridhana by a woman married in forms beginning with the Asura, on failure of issue, belongs to mother and father." 'Paternal' here means received from mother or father by way of gift. 'On failure of children' means on failure of issue begotten on a woman married in any one of the forms beginning with the Asura. The word 'issue' includes all heirs of Stridhana beginning with the daughter and ending with the son's son mentioned before. As regards the text of Yama, "wealth, which is given at the forms of marriage beginning with the Asura, is taken by the father alone, where the woman dies without issue," in-

it 'given' means given by the father, which is understood. Thus there is no inconsistency with the text cited before.

Property given by paternal and maternal uncles and the like are taken by them in Asura marriage.

18. Thus Stridhana which is given by Bandhus like the paternal uncle and the maternal uncle, even when there is the husband, goes to the said Bandhus beginning with the paternal uncle, in their default to the husband. This consequence ensues in forms of marriage beginning with the Asura.

Sulka taken by brothers and next by mother.

19. But some kinds of gifts from Bandhus do not go to the giver. So says Gautama: "The sister's (Sulka) fee belongs to her uterine brothers, in their default to her mother." The Stridhana called Sulka has been defined in the previous section. The givers of it are the bridegroom and the like. It does not go to them, though they are the givers of it, but goes to the uterine brothers of the owner of the wealth and in their default, to her mother.

Sulka on death before marriage taken by the husband.

20. The text of Sankha: "the Sulka given by himself, the bridegroom takes" refers to the case when the bride dies before the completion of the marriage from the text of Yajnavalkya; "if she die, let what had been presented be taken back." 'What had been presented' means Sulka or ornaments and the like which had been given. 'Be taken back,' *i. e.*, by the bridegroom.

Maiden's wealth taken by brother, mother and father.

21. With reference to the estate of a maiden, Baudhayana says: "The heritage of a deceased maiden, her uterine brothers shall take; failing them, it belongs to the mother; failing her, to the father."

Sister's son, &c., take on failure of son, daughter's son and their son.

22. Vrihaspati enumerates the secondary mothers and declares their right to inherit thus: "The mother's sister, the wife of a maternal uncle, a paternal uncle's wife, a father's sister, a mother-in-law and an elder brother's wife are declared to be equal to a mother. If they have no legitimate son of the body, nor (other) son, nor daughter's son, nor their son, those beginning with the sister's son shall inherit their property." 'Sister's son,' *i. e.*, the sister's son of the deceased owner takes the estate of his mother's sister. Persons included by the word *Adya* (beginning with) take in order the estate of those who are equal to their mothers.

Step-son takes on failure of issue and husband.

23. In the above manner, the issue of a rival wife takes the estate of the secondary mother (*i. e.*, the step-mother) on failure of her issue and her husband and the like.

24. In some cases, even when the husband, the father, the brother and the like exist, Manu declares the right of a particular kind of son of the rival wives to take the estate of the secondary mother, thus : "Whatever property may have been given by her father to a wife (who has co-wives of different castes) that the daughter of the Brahmani co-wife shall take, or that (daughter's) issue." By saying 'given by her father' it is indicated that (the heirs mentioned), take even if there be the husband, the father and others who would be heirs under rules mentioned before. The meaning is that the estate of a wife of a caste different from that of the husband, when she dies childless, is taken by the daughter of co-wife of the same caste with the husband or by her issue.

The father's gift to a wife of a different caste is taken by the daughter of a co-wife of the same caste with the husband.

25. Thus it may probably be inferred that when there are several wives of the same caste with the husband, the estate of any one of them dying childless is not taken by the co-wife's daughter or her issue but by the husband when the marriage was in one of the approved forms beginning with the Brahma, but when it was in other forms, it is taken by him who had given the property to the woman.

When the wives are of the same caste, the husband takes as appeared form of marriage, otherwise the giver.

26. Katyayana thus closes the subject of Stridhana : "Thus the partition of Stridhana with its legal incidents have been described." The meaning is that the law thus ascertained and the rule of partition relate to Stridhana.

CHAPTER X.

ON PARTITION OF WEALTH OBTAINED FROM SECONDARY FATHERS.

1. On the subject Manu says : "Nor brothers, nor fathers (but) sons take the father's estate ; but the father shall take the inheritance of (a son) who leaves no male issue, and his brothers." But he (Manu) having himself declared "the legitimate son alone shall be the owner of the paternal estate" the non-participation of brothers and the like seems clear, why then there is this express rule of their exclusion ? Surely this cannot refer to deceased sons, because then it would be clearly inconsistent with the plain meaning of

The right of secondary son.

the text: sons take the heritage. The true answer is that in the text 'sons take the father's estate' the words 'son' and 'father' are used in a secondary sense. The sons of the descrip ion Kshetraja and the like take the estate of the father, who is the owner of the soil, *i. e.*, the husband of the woman on whom such sons are procreated, and not his brothers and the like.

2. The sons Kshetraja and others are thus described by him: "He who was begotten according to law on the wife of a dead, incurably diseased or impotent person, appointed according to law, is called the Kshetraja son.

Kshetraja or the son by an appointed wife.

"That boy equal (by caste), whom his mother or his father out of affection gives with libations of water in distress, as his son, is known as the Dattrima or the adopted son.

Adopted son.

"The boy equal in caste possessing the qualities of a son, who is made a son, by a person knowing what is right and wrong, is called the Kritrima son.

Kritrima son

"When a boy is born in one's house and his father is not known, he becomes the Gudhotpanna son of the person of whose wife he is born.

Gudhotpanna or the son secretly born.

"A boy deserted by his mother and father or by one of them, who is taken as a son, is known as Apabiddha or the son deserted.

Apabiddha or the son deserted.

"A boy whom an unmarried girl conceives secretly on her father's house, is known as the Kanina son born of a Maiden, of the person who marries her.

Kanina

"If a pregnant woman marry, whether her pregnancy be known or not, the son born belongs to the husband and is called his Sahodha.

Sahodha.

"He who is purchased for making a son from his parents, whether he is equal or unequal, is called the Krita or the son purchased.

Krita or the son purchased.

"He whom a woman who is deserted by her husband or who is a widow, gives birth to, being married again is called the Paunarbhava son.

Paunarbhava.

"He who has lost both his parents or has been abandoned by them without cause and offers himself as a son to a man is called Svayamdatta or self-given.

Svayamdatta or self-given.

"A son begotten on a Sudra woman by a Brahmana through lust, is considered a corpse though living and is therefore called Parashava.

Sudraputra.

"These eleven, the Kshetraja and the rest, as thus enumerated, in order the wise call substitutes for a son taken to prevent a failure of the funeral ceremonies."

The rule about the adopted son explained.

3. (In the text defining the adopted son), the words 'with libations of water' are used as symbolical of the entire mode prescribed for the gift of a son. That mode of gift has been described by me in the chapter on gift. 'In distress' during famine and the like or when the adopter is in distress because of the want of a son. 'Equal' means of the same caste with the adopter. 'Out of affection' means without any pecuniary consideration.

The texts about other sons explained.

4. (In the text defining the Kritrima son), the words 'is made' mean is taken and acknowledged as a son. (In the text defining the Krita or the son purchased), the words 'equal or unequal' are used in reference to good qualities. (In the text about the Gudhotpanna) the words 'in one's house' mean of his wife. (In the text about the the son deserted). 'deserted' means deserted not because of being an outcast but because of having been born in an inauspicious moment or the like. (In the text about the Sudruputra) the words 'a corpse though living' mean he is dead as a son though living

The last text explained.

5. 'Substitutes for a son' mean secondary sons. The words 'to prevent a failure of funeral ceremonies' means being afraid of the failure of funeral ceremonies, which have to be performed by the legitimate son. The words 'the wise' are connected with the word 'call.'

The legitimate and the adopted sons only recognised now.

6. The secondary sons thus enumerated could all be accepted as sons in past ages. In the (present) age of Kali, however, only the adopted son can be recognised as a (secondary) son, because by the text "the acceptance of sons other than the legitimate and the adopted sons," &c., in the beginning of the Kali age, great men, for maintaining virtue, have prohibited the acceptance of sons other than the legitimate and the adopted sons, and thus even the appointment of the Putrika is prohibited in the Kaliyuga, because the Putrika is other than a legitimate son and an adopted son.

Son can be adopted in the absence of legitimate son and grandson.

7. Thus in the Kali age, when there are no legitimate son of the body and grandson, the adopted son only can become a secondary son and no other.

Sons by wives of different caste, and the Putrika-putra and all other sons except the adopted son obsolete.

8. In the Kali age, when there is no wife of the same caste there cannot even be a primary son, because of the prohibition of marriage with a girl of a different caste. That is declared by the rule of the knowers of the law in the text "the marriage of persons of the twice-born castes with girls of castes different to theirs," &c. Here also it should be observed that the words 'in the beginning of the Kali age, great men have prohibited' are the concluding portion of the text. Therefore, the matter of the right to share the inheritance of sons by mothers of different caste, of secondary sons other than the adopted son, of the Putrika, or the appointed daughter and her son, is not discussed by us, because they are obsolete now and it would therefore unnecessarily swell the bulk of the book.

Can a son be adopted when there is no brother's son or a rival wife's son?

9. Again, as regards the text of Manu, "if among brothers sprung from one father, one have a son, Manu has declared them all to have male offspring through that son," it does not mean that the other brother (having no son) does in reality thus become one with a son. When there is a brother's son a person is not regarded as one with a son. Therefore, Yajnavalkya in the text "the lawfully wedded wife and the daughters also," &c., says "of the sonless deceased person," though there is a brother's son, and in the text, therefore, the right to inherit of the brother's son, in default of the wife, the daughter, the parents and the brother, is declared. It being so what becomes of the text of Manu? We have already said in the Chapter on persons who are entitled to perform the Sraddha, that when the other (sonless) brother is declared one with a son, it is by way of extolling a legitimate son of the body only, like as one is called father of the village. The Sangrahakara says: "Where there several uterine brothers born of the same father, one gets a son, all the rest are also regarded as having a son. The rule about a person having many wives is that if one of them gives birth to a son, that son is regarded as the giver of Pinda of the rest also." In order to avoid a conflict of this passage with what has been said above, Devaswami interprets the passage thus: "in both cases, by adding that no other substitute should be made, it should be understood that the true meaning is that in both cases in the two verses beginning with "where there are several uterine brothers," &c., if the brother's son and the rival wife's son can somehow perform the required duties as substituted sons, no other substitute should be made."

10. Thus in the Kali age receiving of the wealth through a secondary father has application to the case of the adopted son alone. On this matter, Manu says: "Of the man who has an adopted son possessing all good qualities, the same (son) shall take the inheritance, even though brought from another Gotra." The particle *Api* (though) in the text indicates that if taken from the same Gotra the result must be the same.

Adopted son inherits the estate of the adopter.

11. Devaswami thus explains the third quarter of the above text: "or takes his entire estate and also his Gotra." Thus by the creation of fatherhood it should be understood that the ownership of the adopted son in the estate of the adopter and the fact that he becomes of the same Gotra as the adopter arise. By the fact of giving away as there is cessation of sonship, there is cessation of the right of the adopted son to the estate of the person who gives him in adoption. With this object it is said (by Manu): "Adopted son shall never take the Gotra and estate of his natural father."

Adopted son gets the estate and Gotra of the adopter but loses those of his natural father.

12. Though the adopted son takes the estate of the adopter, he does take all in certain circumstances. On that Vasista says: "If after an adoption has been made, a legitimate son of the body is born, (the adopted son) shall *obtain* a fourth part."*

When there is an after-born son, the adopted son takes one-fourth.

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* After this, the following passages appear in Krishnasawmy Iyer's Translation. In the printed copy of the Smriti Chandrika which I have got the original texts are not to be found.

Vishnu:—"Among grandsons by different fathers, the allotment of shares is according to the fathers. Each of the grandsons takes that which was his father's property and not other."

If where among several brothers, one has a true legitimate son and the others have sons of the description of Kshetraja and the like and the brothers die in an undivided state, the partition of the grandfather's property then takes place among the principal and secondary sons according to their respective fathers

There too, where the secondary son of a brother has been superseded by a legitimate son subsequently born to the same brother, the former, that is, the secondary son, gets only a fourth part according to the law as set forth. A similar rule is to be observed (*mutatis mutandis*) where some of the brothers only are dead and the others are living.

CHAPTER XI.

SECTION I.

SUCCESSION TO WEALTH DESCENDING FROM A SONLESS MAN.

Father takes the inheritance of the man without sons of any kind.

1. On this subject, Manu says: "The father shall take the inheritance of a son who leaves no male issue, and his brothers." The literal meaning is clear. The true meaning which is obscure, is thus expounded by the Sangrahakara: "Manu now declares who takes the estate of a man leaving assets who dies without sons of any kind." The meaning is that with reference to the matter as to who takes the estate of a man possessing wealth when he dies without leaving a primary or a secondary son, Manu says that it should be then taken by the father and the like when there are no heirs who are more near, because of their conferring benefits on the deceased, than the father and the like. Therefore bearing in mind that the secondary sons are nearer than the father and the like, the Sangrahakara expounds the real meaning by saying that the father takes (the estate) of the man who dies sonless, *i. e.*, without sons of any kind. That is well established.

Father takes after the widow.

2. But just as the secondary sons are nearer on account of their conferring benefits, seen and unseen, than the father and the like; similarly the wife for conferring benefits, seen and unseen, on an examination of the Vedas and the Smritis, is nearer, and therefore the true meaning of what Manu declares by saying that the father takes the estate of the sonless man is that he does so when there is no widow, which is understood.

3. Therefore considering that the wife is nearer in relationship which is based on the conferring of benefits, seen and unseen, Vrihaspati thus declares that the wife takes the inheritance in default of secondary sons even when there are the heirs beginning with the father and ending with the Sakulya: "In the revealed texts (of the Veda) and in the traditional law (of the Smritis) and in popular practice, the wife is declared to be half the body (of her husband) equally sharing the outcome of good and evil acts. Of him whose wife is not dead, half his body survives. How should any one else take the property, while half (his body) lives? Although kinsmen (Sakulyas), although his father and mother, although uterine brothers be living, the wife of him who dies without leaving male issue shall succeed to his share." In the second hemistich (of the first verse) is declared that wife is nearer because of conferring benefits,

seen and unseen, than the father. As to (her being half) the body, it is said in the Veda that "she who is half of himself" etc. 'Of himself' means of the body. It may be said that half the body means as half of one's body confers benefits seen and unseen upon one, so does the wife. 'In the Smritis' *i. e.* in the Dharmashastras, it is found: "he whose wife being half the body drinks spirituous liquor, for him whose half the body has fallen there is no salvation" and like texts. In 'popular practice.' *i.e*, in the Artha Shastras, which are in accordance with popular practice, it is found: "who is that learned man who will forsake the wife who is half his body" and like precepts. "Equally sharing the outcome of good and evil deeds," *i. e.*, because of the right of equal participation in all works. From the rule of Panini "the word *Patni* (wife) is derived (by the addition of *Na*) as signifying association in sacrifices." The wife of the man without a son, primary or secondary, being married according to one of the approved forms like Brahma, which confers the right of association in Yajnas, (shall succeed.)

A wife married in Asura form is not Patni and heiress.

4. Thus a wife purchased with money is deprived of the position of a Patni. As says another Smriti: "A woman purchased is not a Patni. She cannot be associated in sacrifices to the gods or to the ancestors. She is considered a slave by the learned." Not having the position of a Patni such a wife can confer only benefits that are seen. To show this it is said 'she is considered a slave by the learned.'

Competence to perform sacrifices, cause of inheritance.

5. Thus the competence to perform sacrifices to the ancestors, and the like also, is the cause of he taking the husband's estate. This is shown by the use of the term Patni in the text. Therefore a Patni by her being entitled to the right by reason of chastity to perform the Vedic and the Smarta rites obtains the husband's estate. So says Prajapati "If a woman dies before her husband, she takes the Agnihotra (fire) with which she has to be burned. If the husband dies before her, a chaste woman obtains the husband's wealth. This is the ancient immutable law." The Agnihotra means the fire for performing the (daily) fire sacrifice. 'Chaste means one who is well restrained and who by reason of her continence is competent to perform Vedic and Smarta ceremonies living with her husband. 'Woman' here means *Patni*, because from the mention of her taking the Agnihotra; her position of a Patni is shown from her competence for sacrifices. Vrihaspati thus declares her competence to perform rites in honor of the ancestors, in preference to the brother: "The wife (patni) is entitled to perform (the ceremonies) on failure of issue; on failure of the wife, the brother."

6. In this connection Vriddha Manu says: "A widow, who has no male issue, who keeps the bed of her lord unsullied and who strictly performs the Bratas shall alone offer the Pinda and obtain his entire share." In the second hemistich, according to the meaning, the words should be construed in reverse order. From that the meaning is that a wife having the qualifications mentioned, takes first the estate and next offers the Pinda, and when she exists, the brother and the rest are not entitled to do so. 'Keeping the bed of husband' mean being well restrained. "Who performs the Bratas" means who during the lifetime of the husband with his permission performs religious works, as appears from the text of Sankha Likhita: "The duty of a wife is to perform Bratas, observe fasting and religious regulations and perform sacrifices with the permission of the husband." By this it should be understood that the text says indirectly that piety is also necessary for obtaining the husband's share.

Chastity and piety necessary to entitle a widow to succeed.

7. Though by marriage the wife's ownership in the husband's entire wealth during his lifetime of a dependent character is established, still she acquires ownership in independent character; (after the husband's death). It is for this reason that the word 'obtains' is used in the text.

The wife's dependent ownership in husband's estate, becomes independent ownership on his death.

8. The meaning of the words 'Pinda' and 'entire' (in the text mentioned above) is thus explained by Prajapati: "After having received all the movable and immovable property, the gold, base metal and grain, liquids and wearing apparel, she shall cause his monthly, six monthly, and annual Sraddhas to be performed. Let her propitiate with funeral oblations and Purta or pious liberality, her husband's paternal uncle, Gurus, daughter's sons, sister's sons and maternal uncles; also aged or helpless persons and guests." 'Base metals' mean brass, lead and the like. 'Funeral Oblations' means articles dedicated for the ancestors. 'Purta' means presents given in ceremonies concerning charitable acts, like digging of wells, tanks, etc.

The widow's duty in spending.

9. It thus may be said that the widow having taken the entire share of the husband inclusive of immovables, she should perform the Sraddhas and Purta works and the like requiring expenditure of money, which a wife is entitled to perform, as well as make gifts in charity and perform all works which may lead to the spiritual benefit of the husband, as well as of

The widow has power to spend for charity and religious works for the benefit of her husband and herself.

herself, with the help of the Ritwik, (priest) and the Acharya (Guru) of the husband's family, in proportion to the wealth obtained.

10. Some say that the estate, which is one that should be enjoyed by the husband's family, becomes of no use to the husband's family when taken by the widow and therefore she is not entitled to the husband's estate. This should be rejected as based on invalid reasons.

Widow takes when husband separate.

11. Now the right of the widow to the husband's estate can arise only when the husband dies divided in estate. So says Vrihaspati : "The husband being separated (from his former coparceners) his wife shall take after his death a pledge and whatever else is recognized as property, excepting the immovable wealth." The meaning is that property of various kinds, a pledge and the like, immovable and movable, which belonged to the husband, becomes the widow's. By the use of the term 'divided' it is meant that in case of jointness father, brother and the like who live together obtain the estate of the deceased sonless man. 'Wife' means here *Patni.*

A widow having a daughter can get immovable property.

12. "Excepting the immovable wealth" in the above text means that that is the case when the widow has no daughter, because if it applied to the widow in all cases, it would be inconsistent with the text (of Prajapati) above-mentioned : "after having received the movable and immovable property, the gold, base metals, grain, liquids, &c." It cannot be said that because of this inconsistency, this text (of Prajapati) refers to the share of the husband, when he is undivided in estate and the text of Vrihaspati refers to the case when the widow is not of good conduct, because to prevent a different construction being put, he (Vrihaspati) himself has laid down : "Even if the wife be virtuous and the husband died divided in estate, she is not deserving of immovable property." The meaning is that the competency to inherit immovable property upon which depends the maintenance of descendants is conditioned on having issue and therefore, a widow having no issue, even if chaste, and even if the property be separate, cannot take immovables.

Widow's interest is for life. She can not alienate.

13. Again he (Vrihaspati) says : "When her husband is dead, she who maintains the family shall receive her husband's share for her life but her proprietorship does not extend to enable her to make a gift, motgage or sale." 'Kulapalika means who maintains the family, *i.e.*, being chaste.

14. As there is sanction for the widow to make *gifts for the support of the old, the helpless, the blind and the like, which are for unseen, i.e.,* spiritual purpose, this text prohibits gifts, which are for purposes other than those, *i.e.*, which are seen or temporal. This is the meaning. Thus the widow has independent power to make gifts for religious purposes. Therefore to show that the widow should constantly make gifts for religious purposes, he (Vrihaspati) says: "A widow constantly engaged in meritorious observances and fastings and established in chastity and constantly making gifts for religious purposes, goes to heaven, even though she is sonless." The injunction to perform daily and occasional religious ceremonies is inapplicable to one who is dependent.

Widow can make gifts for religious and charitable purposes.

15. Thus the independent power of the widow to mortgage or sell for the accomplishment of acts for spiritual purposes, which can be performed only with property, is not prohibited. This is the meaning.

Widow has power to alienate for spiritual purposes.

16. There is some other text in which Katyayana declares: "Let the sonless widow preserving unsullied the bed of her lord and steadfast in her continence* enjoy with moderation the property until her death. After her let the heirs take it." Here the words 'with moderation' mean patient of the interference in the disposal of property by relations other than the present heirs. This can apply to the undivided property obtained by a widow for her own maintenance, when the father-in-law and the like are incapable of maintaining her or are engrossed in other works. If it applied to divided wealth, it would be inconsistent with the texts of Vriddha Manu and the like. When the father-in-law and the like, who take the undivided estate, are able to maintain her, they who thus take the wealth should maintain her. So says Narada: "Those wives who become widows and are chaste, should be provided with food and raiment by the elder brother of the husband, the father-in-law or any other Gotraja." 'Such as take the estate of her husband' should be considered as understood, after the words elder brother and others.

17. Katyayana declares a special injunction in regard to the duty to maintain, which is dependent on the taking of the estate, thus: "On the husband dying, the wife is entitled to food and raiment. Or she obtains a share of the undivided wealth till her death." 'A share of the wealth' means so much wealth as is

In joint family a wife gets only bare maintenance but a Patni may get a share of the estate.

* Krishnasawmy reads गुरोस्थिता and translates it 'as abiding with his venerable protector Guru.'

sufficient for maintenance without distress and for the performance of daily and occasional ceremonies and religious works for a purpose, which require expenditure of wealth. The particle Tu means or 'Obtains a share of the wealth' means receives a share of the land, which is sufficient for her maintenance. This is the meaning, as the word wealth signifies any property which may be the means of subsistence. The first alternative (providing for only food and raiment) applies to a wife, who is not a Patni.

Minimum limit of maintenance.

18. The minimum limit of the amount of wealth and grain just sufficient for maintenance (of such wives) is mentioned by Narada : "A virtuous woman whose husband is dead, receives every year a maintenance of 24 Adhakas and 40 Panas." Adhaka means 192 Prasthas (or double handfuls) of grain. Pana means Karshapana. That is considered to be equivalent to one eightieth part of a Nishka (a gold coin) in some countries. In those countries where the Pana is not current, the widow) obtains the one eightieth part of a Nishka (for a Pana). Vrihaspati premising "though partition has been made)" says : "Food or a portion of the arable land shall be given to her at will (for her support)." Food here includes both food and raiment. Thus the meaning is that in the case of separation where the wife is not a Patni entitled to the share of her husband, she should be given food and raiment to the limit mentioned before or a share of the arable land which may yield an income of that amount for her maintenance. The particle *eva* in the text is used to indicate that the granting of maintenance is imperative. The first alternative (providing for granting only food) applies to the case of woman who does not do service to her father-in-law and the like. This is indicated from what has been said before.

Maintenance grants cannot be resumed on the death of the grantor.

19. What has been given for maintenance cannot be resumed by persons other than the giver. The rule as to the period of the maintenance is thus stated by him (Vrihaspati) : "Maintenance granted to a widow by way of a grant of land by the father-in-law cannot be resumed by the other coparceners on his death" The term father-in-law here includes all persons who grant maintenance. Land here includes also all kinds of wealth. Therefore, it should be understood that even when maintenance is granted by giving money, what is given cannot afterwards be taken back.

When maintenance grant may be resumed.

20. But sometimes it can be resumed, as says Katyayana : "She who is devoted to the service of her father-in-law and the like, is entitled to enjoy her appointed share ; if she will not do them services, raiment and food only

shall be appointed," *i.e.*, by resuming the allotted share. Thus the appointed share in the case of women doing evil acts should also be resumed, as is declared by Katyayana: "If she is guilty of improper actions, shameless, extravagant or unchaste, she does not deserve wealth." Wealth here means the portion of the wealth or portion of the land allotted to her for her maintenance and the like. The four descriptions of women mentioned do not deserve (such wealth). The term 'wealth' here refers to means of food and raiment. Therefore Narada says: "Let them allow a maintenane to his women till they die, in case they remain faithful to the bed of their husband. In the case of others, they must cut off that allowance" 'In the case of others' means in the case of the unchaste women. 'Maintenance' means the property of the value of grain and clothes appointed for her maintenance. 'Cut off' means resume. This is the meaning.

Maintenance of unchaste wives.

21. As regards the text of Manu: "let him follow the same rule in the case of female outcasts; but clothes, food and drink shall be given to them and they shall live close to the family house," it refers to maintenance by the husband, as appears from the preceding text. Thus there is no inconsistency.

Maintenance in case of untractable women of suspected unchastely.

22. The treatment of women of suspected unchastity, even in case of divided family and even when they are of the rank of Patni is thus prescribed by Harita: "When a woman is a youthful widow and is untractable, she should be given maintenance (enough) for preserving life." 'Untractable' here means of a crooked disposition, headstrong and likely to be unchaste.

The widow does not take in case of reunion.

23. The following text of Manu appears inconsistent with the text of Vriddha Manu to the effect that the widow succeeds to his entire estate: "If the eldest or the youngest (brother) is deprived of his share or if either of them dies after partition his share is not lost. His uterine brothers having assembled together, shall equally divide it and those brothers who were reunited (with him) and uterine sisters." (In this text) 'is deprived' means is deprived by reason of being outcast or being a Sanyasi. Again Narada says: "If among several brothers one childless should die or become a religious ascetic, the others shall divide his property excepting the Stridhana." The above two texts, clearly refer to the property of reunited coparceners and thus there is no inconsistency. It should therefore be understood that the rule that 'the widow succeeds to the entire estate' refers to the case of a divided and not reunited coparcener. To that effect says the Sangrahakara: "When the brothers are divided

and not reunited, the widow takes the estate, abiding by the direction of the Guru in the matter of Niyoga." "Abiding by the direction of the Guru in the matter of Niyoga' is the opinion of Dhareswara, which being wholly reprobated by Visvarupa and others, should be disregarded. Therefore in what the Sangrahakara says, the opinion that only the widow having the qualifications mentioned in the text of Vriddha Manu obtains the entire estate of her husband, should be accepted.

The text of Veda excluding all females interpreted.

24. The text of the Veda · "therefore women and sons without an organ of sense are not heirs," is not opposed to the texts of Vriddha Manu and others (mentioned above), because on account of its mentioning sons without any organ of sense, with women, it should be understood to refer to females who are in the category of children Even granting that it refers to all women, it is a text of the Veda stating in an exaggerated form the rule that women other than these females beginning with the widow are not heirs.

When there are several widow they take equally

25. When there are several widows, it is proper that all of them should take equally dividing among themselves the property of their sonless husband

26. Those that injure the estate taken by widows should be punished by the King, as says Prajapati: "Her Sapindas and Bandhavas who stand in her way and injure her property, should be chastised by the King with the punishment of theft."

CHAPTER XI.

SECTION II.

ON THE RIGHT OF HEIRS BEGINNING WITH THE DAUGHTER (DAUGHTER AND DAUGHTER'S SON.)

1. On the subject of the daughter and the like certain texts are cited.

Vrihaspati say: "The wife is declared to succeed to her Husband's property, and in her default, the daughter." 'In her default' means when there is no wife. Therefore Vishnu says: "The wealth of a sonless man goes to his wife; on failure of her, to his daughter."

Daughter succeeds after son and widow.

The reason of this order of succession is thus given by Vrihaspati: "A daughter like a son springs from each member of a man. How then when she exists, should any other person inherit her father's property" "The daughter is equal to the son in the matter of connection with the body. In the son the bodily particles of the father attach very largely, in the daughter, they attach to a

less degree, from the text: "the male child is born when the seed predominates and female, when the woman contributes more." Thus as she is equal to some extent, the daughter is mentioned to be equal to the son. (In the text cited above) 'any other person' means how can the father and the like, other than the son and the widow, take the estate of the sonless man when the daughter exists? So says Manu: "A son is even as one's self, a daughter is equal to a son, how can another take the estate while one's self lives?" 'One's self' means one equal to the son, who is like one's own self.

2. But it may be said that no reason has been given for the order that the daughter take after the secondary son and the widow, as the reason stated by Vrihaspati establishes only the position that the daughter succeeds in default of the legitimate son of the body. True. But Vrihaspati intended that the reason should be inferred for the order of the daughter taking in default of the secondary son and the widow. Therefore Narada thus mentions the reason for the order of the daughter taking in default of both the said persons, which is apparent from the text, for the benefit of the uninstructed: "On failure of a son, the daughter, succeeds, because she continues the lineage just like a son." He himself gives the reason thus: "Both son and daughter continue the lineage of their father." The meaning is both of them continue his lineage and thus benefit their own father. But the son's son and the daughter's son or the descendants of the son and the daughter, are declared equal though they are in reality unequal, because they are equal in respect of certain works. But they are not equal in regard to payment of debts or succession, because of the text (of Yajnavalkya): "the debts shall be paid by the sons and the son's sons" and also because of the text about the grandpaternal property to the effect that, "therein the ownership of both father and son is equal," which shows that the son's son is superior. Therefore it is intended by the text, that they are equal only in respect of spiritual works *i.e.*, in the competency to perform Sraddhas from the text of Vishnu: "In the matter of performing Sraddhas of the ancestors, the daughter's son is regarded as the son's son."

The reason why the secondary son is superior to the daughter.

3. Thus the nearness as to heirship of daughters is because of their connection with the spiritual benefit conferred by means of their sons. But on account of such reason in default of the son, when the widow exists, the daughter does not take the estate, because the wife is associated in the Agnihotra, which confers spiritual benefit. Therefore in the text "on failure of a son, the daughter, etc." the word son is used as including the widow also.

4. The objector says that the father by performing himself the Sraddha of the son confers spiritual benefit and thus he is to be preferred on account of the application of the text (of Manu): " the father takes the estate of the sonless person " in default of the widow. How then can the daughter take the wealth (in such a case) ? This is not correct. Because by the text " how then when she exists should any other person inherit," room for such application is not given. Again though she is more distant in the matter of conferring spiritual benefit, she is nearer, being the nearest in point of connection with the body.

The daughter's son takes before the father.

5. The objector says : let it be so but then the father takes in default of the daughter on account of the application of the text : " the father takes the estate of the sonless man." No. There is no room for such application even then, because in default of the daughter, the daughter's son being in the same category with her is nearer than the father and the like, from the text of Vishnu : " If a man leaves neither son, nor son's son nor issue, the daughter's son shall take his wealth. In the matter of performing the Sraddha of the ancestors the daughter's son is regarded as the son's son."

Daughter as heir is not necessarily the Putrika.

6. Thus the opinion of Dharaswara, Devaswami and Devarata that the statement of Vrihaspati, accompanied with reasons for it, that the daughter takes in default of the widow, refers to the Putrika and not to the daughter not made Putrika, should be considered as refuted as the result of the madness produced by the overweening pride of perfect knowledge of the Smritis and the Tantras. Again Vasista say : " The Putrika is declared to be the third of the different kinds of son." The Putrika thus being in the category of secondary sons, takes like the Kshetraja son, even when the widow exists, by virtue of the text of Manu : " Nor brothers, nor fathers, but sons take the paternal estate." An thus while the Putrika daughter, is the heir on failure of the Aurasa son, her right to inheritance in default of the widow follows by the Nyaya rule of the loaf and the staff ; and thus where is the necessity of establishing the daughter's right of inheritance by giving reasons for it, in the texts of Vrihaspati and others ? Thus by them this opinion (about the Putrika's taking) is refuted. It is therefore unnecessary to make further efforts to refute the opinion of Dhareswara and others, which is fit to be rejected.

The objector says: With reference to the sonless widow, Narada declares : "She who is her daughter, her father's share should be appropriated for her maintenance. She takes this share up to her marriage, after that, the husband maintains her." The meaning of the text is as follows. 'Her' *i.e.*, of

the sonless widow, if there be a daughter, her father's share is appropriated for her maintenance. Therefore up to her marriage, she takes her father's share for her maintenance and not for disposing of it as she pleases. Thus the obtaining by all daughters of the share of their father is by way of temporary appropriation for them for a purpose and all texts to the contrary establishing the right of daughters to the estate of the father refer to the Putrika alone. If they be considered as referring to all daughters, they would be rules of universal application, like the text (of Narada enjoining) appropriation for a purpose and would not be by way of exception and thus meaningless. Therefore the opinion of Dhareswara and others should be followed. The reply is that would be so, if the text of Narada was applicable to a separated coparcener. But the text really is applicable to the case of a reunited coparcener as is clear from a consideration of verses preceding and following it. Thus the texts which allow daughters to inherit in separate estate cannot be considered as by way of exception to the rule which allows them so to inherit. There is no foundation for the supposition that they refer to the Putrika. It is not necessary to dilate on the matter

The maiden and poor daughters but not childless daughter succeed.

7. Even thus these texts do not apply to all descriptions of daughters generally, for Katyayana says: "The widow takes the estate of the husband, if she is chaste; in her default, the daughter if unmarried (or) unprovided." Thus the aforesaid texts should be considered as applicable to unmarried daughters or to unprovided daughters. Unprovided here means because of poverty and not unprovided because of childlessness on account of barrenness and the like, for the latter one is incompetent to inherit being wanting in the relationship of being one conferring spiritual benefit through her offspring.

'In her default' means in default of the chaste wife and not in default of wives generally Thus the daughter inherits not on failure of wives in general but on failure of a wife with the qualification of being chaste. Therefore the Sangrahakara says: "In default of such a wife, the Putrika succeeds." (The meaning is that) she succeeds not on failure of wives generally but in default only of a wife, who has the qualification mentioned as necessary for inheriting the estate. As regards the statement that only the Putrika succeeds, it is to be disregarded having been refuted before. For similar reasons should be rejected the incorrect interpretation of some that the daughter takes in default of wives in general and the father and the like take in default of the wife with the necessary qualifications (in preference to the daughter) by virtue of the text of Manu "the father shall take etc."

8. Vrihaspati, thus declares the qualifications necessary for daughters to inherit on failure of the wife and also on failure of primary sons and the: "equal in caste, married to a man of the same caste, virtuous, and habitually submissive, she shall inherit her father's property, whether she may have been expressly appointed or not." 'Equal' means of equal caste with her father. The four qualifications mentioned in the text apply to all daughters who take in default of the widow and the two last 'expressly appointed or not' are qualifications of daughters who take before the widow and they qualify the word Putrika which must be added as understood. In other cases, the word daughter should be considered as understood. The particle '*Ba*' (or) is for denoting an alternative rule. Thus the meaning of the text is that the estate of the man without an Aurasa son, the two kinds of Putrika mentioned in the text take before the wife and the daughters having the qualifications beginning with 'being of the same caste,' take after the wife.

Putrika takes before the widow.

9. The conclusion thus is that after the death of the widow, when there are unprovided and also unmarried daughters having the qualifications beginning with being of the same caste, the unmarried daughter takes first, because she has to be maintained by the father. In her default, the unprovided daughter, who though she has to be maintained by the husband is unprovided, because the husband is incapable of maintaining her. In her default, takes any other provided daughter having the qualifications beginning with being the same caste, because she is competent to inherit. In her default, succeeds the daughter's son being in the same category with her as can be inferred.

The maiden daughter, after her the unprovided daughter, after her the provided daughter, after her the daughter's son takes.

CHAPTER XI.

SECTION III.

ON THE RIGHT OF THE PARENTS.

1. In default of the daughter's son, as there is no one nearer than the father, the text of (Manu): "the father takes the inheritance of a son who leaves no male issue" applies, and the estate goes to the father.

After the daughter's son, father takes and also the mother.

Now again, as there is no one nearer than the mother the text (of Manu): "a mother shall obtain the inheritance of a son without issue," applies and the estate goes to the mother. Therefore Yajnavalkya says: "The lawfully

wedded wife, and the daughter also, both parents, brothers &c." By the word 'also' it is indicated that it is only after the daughter's son, that both the parents inherit simultaneously, as there is no ground for giving the one percedence over the other. This is the meaning.

Conflicting arguments considered.

2. Some who pretend to be learned without understanding the meaning of Yajnavalkya, adduce the reason that the mother confers very great benefit by bearing the child in her womb and in supporting it and also there is the text: the mother is superior to a thousand fathers, in point of right to veneration," and say that even when the father exists, the mother inherits first. This reasoning is not sufficient to establish that the mother inherits first, because the father benefits the son in various ways and imparts learning to him and because there is the text: "of these two, the father is superior, because the seed is regarded as more important."

Others again adduce another reason, namely the father is common to all sons by rival wives, but the mother cannot be common and thus there is greater nearness of relationship. This reasoning is specious, as there can be no distinction in nearness between mother and father in the matter of procreation, nor again because of relationship with many, the extreme nearness on account of direct relationship does not cease. Again they say that because of the rule of *Samasa*, the mother comes first; this also is erroneous. (In the Mimansa) in the rule "there are two Saraswat sacrifices," there being no order mentioned, the order of precedence is shown by the order in which the sacrifices are mentioned in the Fifth Chapter, and the order is not established somehow by resolving the compound word Saraswatau by the rule of *Samasa*, and thus such arguments cannot support the priority of the mother. Therefore Srikara's opinion that the parents divide the estate between them, is also incorrect. The two texts (of Manu), "the father shall take the inheritance of a son who leaves no male issue" and "the mother shall obain the inheritance of a son who dies without issue," confer rights independently of each other, just as paddy and barley are required in sacrifices independently of each other. Others again conclude the greater nearness of the mother because in the text (of Yajnavalkya) "but an uterine brother shall retain or deliver the allotment of his uterine relation" the word uterine being used, shows superior relationship on account of being connected with the mother and thus the nearer relationship of the mother can be inferred.

This argument is based upon a prop weak like a blade of Kusa grass. Let it be conceded that there is superiority in consanguinity of uterine brothers over non-uterine brothers, because of their having different mothers, but we cannot

understand how there can be any superiority in consanguinity of the mother over the father.

Therefore where both the parents exist, the order should be determind. Shambhoo says that no order need be stated as there is community of property between husband and wife, whoever takes the estate, takes for the use of both.*

Conclusion. Father takes before the mother.

3. When there is an absence of reason, the text of the Smriti alone must be relied upon. In the text the father's priority of inheritance is declared. (The text) says : "The wealth of a man who dies without male issue, goes to his wife ; on failure of her, to his daughter ; on failure of her, to his father ; on failure of him, to his mother." Though in this text it is said that the estate of the sonless man, in default of the daughter goes to the father, still it should be understood that the father takes on failure of the daughter's son. The want of mention of the daughter's son (in the above text of) Vrihat Vishnu should therefore be considered as owing to the fact that the daughter's son is regarded as being in the same category with the daughter.

CHAPTER XI.

SECTION IV.

ON THE RIGHT OF SUCCESSION OF BROTHERS.

The uterine brother takes first after the mother.

1. On failure of the mother, the right of inheritance of the uterine brother is deduced on the reasoning that he is extremely near to the deceased brother because of his being born of the same mother.

After full brothers, half brothers take.

2. In his default, the right of succession of the half-brother was declared by Yajnavalkya when he laid down the order of succession based on reason thus : "Both parents, brothers likewise, etc." By the mention of the words 'brothers,' it is intended to refer to the uterine brother, who is a nearer heir in respect of the estate of the deceased than the half brother. By that, the rule is laid down by Yajnavalkya that in default of the mother, the estate of the sonless man goes to the uterine brother. After that, though the special qualification of being a uterine brother was intended yet on

* After this, Krihnaswamy Iyer puts the following : "This is not right. Whatever the mother takes, she takes for herself like the Stridhana called Adhyagni and the like and not for benefit of both herself and her husband. Therefore an order of succession must certainly be stated. We now proceed to state it" The original of this portion is wanting in the printed copy of the book edited by Bhorat Siromoni in 1870. Sir Gooroodas Banerji doubted its authenticity. But it must be said that without it, the passage preceding becomes meaningless.

account of the use of the general term 'brothers,' the rule that the half-brothers take on failure of full brothers, is also prescribed by him (Yajnavalkya)

3. In the aforesaid two matters, an exception is mentioned by Katyayana thus: "If a man dies separate from his co-heirs, let his father take the property on failure of the son or the brother, or after him the mother or the father's mother, in succession.

Text of Katyayana interpreted.

'Father's mother' means the mother of the father of the separated sonless deceased person *i.e.*, his grandmother. The word 'son' is used to indicate all nearer heirs and thus on failure of heirs beginning with the son and ending with the daughter's son, who are nearer because of conferring temporal and spiritual benefits than the father, the father takes first This is the meaning The alternative 'or' is used here as meaning an alternative in case of default of superior heirs. In the thing called ownership which vests in one person at a time, there cannot be an alternative because of equality of right (in two persons), or by virtue of the rule of Nyaya that in the essence of a thing there can be no alternative. Thus it should be said that the meaning is that in default of the father, the brother, in his default the mother, in her default the grandmother, is mentioned in the order of succession according to the order in the text. In this order in respect of a deceased separated person Manu by meaning (in the text the qualification) sonless which is symbolical of the want of the son, the widow, the daughter and the daughter's son who are all more nearly related, declares the succession of father, brother, mother and grandmother in the following verse and a half: "The father shall take the inheritance of the sonless man and his brothers also." "A mother shall obtain the inheritance of a childless son, and if the mother be dead, the paternal grandmother shall take the estate." The word 'sonless' here means having no son, wife, daughter and daughter's son.

Thus the order of heirs declared by Manu and Katyayana beginning with the father and ending with the grandmother being placed by the text in one compact series is inconsistant with the order founded on reasoning of (Yajnavalkya) who is opposed to it. This apprehension of opposition to reason should not be entertained. The text of Yajnavalkya is declaratory of the order, because the order is expressly declared in so many words by saying that on failure of one first mentioned the next in order (takes) and therefore the texts "the father shall take the inheritance of the sonless man" and the like, only declare the right and not the order of succession: Such interpretation also should be disregarded, because the order of succession is also expressly

mentioned in the two texts of Katyayana and Manu : "the mother or the father's mother in succession etc." (and) "and if the mother be dead etc."

The brother takes before the mother, when she consents.

4. The special circumstances under which the brother takes before the mother is thus mentioned by Vrihaspati : "When a man dies without leaving either wife or son, the mother has to be considered as her son's heiress or a brother (may succeed) if she consents to it." The word 'wife' (in this text) is symbolical of daughter, daughter's son and parents included in the compact series of heirs mentioned in the text (of Yajnavalkya) founded on reason. Thus without leaving wife or son means without leaving son, widow, daughter, daughter's son and father. Thus to the order of compact series of heirs prescribed in the text "both parents, brothers likewise etc." it should be considered that there is an exception on account of the order prescribed by Katyayana and the like, when there is the consent of the mother (to the brother's taking) and also in the case of the grandmother.

Grandmother takes after the mother and before the brother.

5. The opinion of some who say that the paternal grandmother takes after the brother's son because she has no place in the compact series of heirs, mother, father, brother and brother's son, whose order is prescribed in the text "both the parents, brothers likewise and their sons" etc., is also refuted by this, inasmuch as there is no contradiction on account of any special place having been assigned to her in the prescribed order. Nor is there an absence of the special mention of the grandmother in the order of heirs, because in the text of Katyayana (above mentioned) by the use of the words "after him" and also in the text of Manu by the use of the words "if the mother be dead," there is special mention of the grandmother in the order of heirs and because it is possible to insert an exception founded on a special text in the order of compact series of heirs mentioned before, which is founded on reason.

Sankha's text refers to reunited brothers.

6. Sankha says : "The property of a sonless deceased person goes to the brother, failing him, the parents take." This on the rule of construction of explaining inconsistencies in rules by referring to special circumstances is applicable not to a deceased separated coparcener but to a deceased reunited coparcener. Thus there is no contradiction.

Certain conflicting texts explained.

7. Vrihaspati says : "In default of the son, the widow takes ; failing her, the uterine brother ; failing him, the Dayadas. After them, the daughter's son takes the estate." This text is intended for preventing the brother from taking before the widow

and not for prescribing that the brother should take before daughters etc., who are included within the term Dayada. If it were otherwise, there would be contradiction with the text of Vrihaspati himself: "A daughter like a son springs from each member of a man etc."

Devala says: "Then the uterine brothers, shall divide the heritage of a sonless person, or the daughters of the same caste or the surviving father, half brothers of the same caste, the mother and the widow, according to the order mentioned." Although from the wording, a regular series of heirs would seem to be indicated, yet as it would be inconsistent with all the texts and reason mentioned before, it should be construed as not laying down an order in which some heirs have been left out. Thus the heritage of the sonless man the widow obtains or daughters of the same caste take or the surviving father takes. The word surviving becomes meaningless, unless it is intended that if the father be dead the mother takes. Therefore failing the father, the mother takes. Then the brothers of the same caste with the father in order *i.e.*, uterine brothers first and failing them, half-brothers of the same caste take in due order. The rule applies when there is no consent of the mother to the brother taking and when there is no paternal grandmother.

Katyayana's rule.

8. In this matter, Katyayana has laid down an easily intelligible order thus: "The widow being a woman of honest family, or the daughters, or on failure of them, the father, or the mother, or the brother or his son are pronounced (as heirs) of the sonless man." The word 'son' by the rule of referring to the connected term for a meaning, applies to the son of the brother. Therefore Yajnavalkya says: "brothers and their sons."

9. The Sangrahakara says: "In default of all daughters, the mother takes the heritage, even when there is the father, or the issue of the son of a step-mother; in default of the mother, the father's mother takes, even when there is the father or the issue of the son of a Kshatriya step-mother. In default of the grandmother, the father takes." This is intelligible, if the words 'son and his issue' are considered understood. But the passage is based on the reasoning of Dhareswara and as such reasoning has been refuted by Visvarupa and others and as it is not founded on reason, it should be discarded.

Sangrahakara's opinion that full brother takes before half brother approved.

10. Again he (Sangrahkara) says: "When there two kinds of brothers, the uterine brother and the half brother, the uterine brothers take, when there is a half brother." This opinion should be approved as founded on good reason

11. The above rule applies in the case of the brother's son, when there are both sons of uterine brothers and sons of half-brothers. Therefore, sons of half-brothers take only on failure of sons of uterine brothers.

Sons of uterine brothers take before sons of half-brothers.

CHAPTER XI.

SECTION V.

ON THE RIGHT OF AGNATES AND DISTANT KINDRED.

1. With regard to the question as to who are the heirs on failure of these (brother's sons), Yajnavalkya answers 'Gotraja,' the words 'are the heirs' being added. The term Gotraja (though it means agnates generally) by the rule of construction 'beeves and oxen' means Gotrajas beginning with the son of the paternal grandfather and excluding the father, the brother and his son mentioned before. It also does not include the daughters and the like of the grandfather because it of itself appears to be a compound of nouns of the same character (or gender) and because compounds formed of nouns of different characters (or genders) are known on account of a special cause as in phrases 'let us make fowls or crows have sexual intercourse' and the like. In this instance there is no such special cause. On the contrary because of association with the masculine words brother and 'his son' the term 'Gotrajas' should be considered to mean only males. Again where the Smritis allowing widows, daughters and the like to succeed by virtue of special texts, are inapplicable, he (Yajnavalkya) because of the text of the Veda "therefore are women without strength and without a portion" by using the compound formed of two masculine words, even if somehow the Smriti be considered applicable, (to other cases) has cast aside the possibility of the construction of considering the word as a compound of masculine and feminine words, as that would be contradictory to the text of the Veda.

After the brother's sons more distant male agnates take.

Therefore the commentator while explaining the text of Apastamba "he should during his lifetime divide his wealth among his sons," says 'should divide the wealth among his sons and not among wives and daughters.' Though by the rules of grammar the words brother and son may include sister and daughter, and the term sons (in the text) may include daughters by considering it to be a compound of words of different gender, still only males are heirs and not females because of the text of the Veda "therefore are women without strength and without a portion"; thus this cons ruction is also refuted.

2. Again some say: "Gotraja means the grandmother, the Sapindas and Samanodakas. There the grandmother takes first. The right to succession of the grandmother being established by the text (of Manu) "if the mother be dead, the father's mother shall take the estate" but as there is no room for her in the fixed compact series beginning with the father and ending with the brother's son, the paternal grandmother takes after him (the brother's son) to avoid conflict."* But after the brother's sons in the compact series, their Gotrajas are included and without making an exception in the case of the grandmother nor can she be included within them (Gotrajas), because the word being a compound of two masculine nouns, the male Gotrajas only are included in the compact series with the brother's sons. Nor can the paternal grandmother, who is born of another Gotra, be the Gotraja of the deceased. It is unnecessary to dilate on the matter.

Opinion of the Mitakshara dissented from.

3. The word Gotraja should be considered to have been used by Yajnavalkya as a compound like the word Pitarau (mother and father), because there is no reason for precedence of one Gotraja over another. There is no reason for prescribing that the grandfather's son takes after the brother's son. It is objected that no one has said that the grandfather's son may take superseding the grandfather. But Yajnavalkya himself says so by saying 'brothers and their sons' and then mentioning 'Gotraja.' Though the word Gotraja comprehends the brother and his son, the separate mention of these two persons indicate that among Gotrajas, like the grandfather, the son and grandson of each (ascendant) among their descendants take the estate, like the son and grandson among the descendants of the father. Manu also indicates the same principle thus:

After the brother's son, the son and grandson of the grandfather and other ascendants take successively.

"Always to the relative who is nearest to the (deceased) Sapinda, the estate shall belong; afterwards a Sakulya shall be the heir, then the spiritual teacher or the pupil."

Dhareswara says: "(in the text) the word *Pindat* means to the Sapinda." Who is the first Sapinda from whom the line of Sapindas is to be reckoned? The father, who is mentioned in the text "the father shall take, &c." After the father, when both his father and his son exist, who is the next heir? We say his sons take. Why? Because in the text "the father shall take the inheritance of one who leaves no male issue or his brothers alone," by the particle *Eva* (alone), the heirship of the grandfather is not

* This is the opinion of the Mitakshara.

indicated. From this text, though the propinquity of both these persons is equal, the propinquity should be considered as through descendants only. Thus on the strength of the text "always to that relative who is nearest to the deceased Sapinda," on failure of the descendants of the father, the descendants of the grandfather take; in their default the descendants of the greatgrandfather take. In this mode the succession goes to other Sapindas. On failure of Sapindas, Sakulyas take. Samanadokas are included within the term Sakulya Among them also, on failure of the descendants of the nearest, the descendants of the next in order take." Thus those that say that after the brother's son, the grandfather is the heir and in his default, his descendants and similarly in case of the greatgrandfather and other (ascendants), are ignorant of the purport of the text about the order of succession which is different from the order founded on reasoning.*

The order of succession after the brother's son.

4. The order of succession thus stands as follows. In default of the brother's son, the son of the grandfather takes; in his default, his son (grandson of the grandfather); in his default, the son of the great grandfather; in his default, his son, in his default, the son of the great grandfather; in his default, his son and so on, up to the son of the last Sapinda. In his default the son of the first Samanodaka takes and in his default, his son. In this manner the succession devolves on the descendants of the six Samanodaka ascendants.

Bandhus discribed and the order of their succession

5. Vrihaspati in view of the above says: "when there are several agnates, Sakulyas and Bandhavas, whosoever of them is the nearest shall take the wealth of him who died leaving no issue." Agnates mean Sapindas, Sakulyas and Samanodokas. Bandhavas are those described in another Smriti in their order of nearness of relationship thus: "The sons of his own father's sister, the sons of his own mother's sisters, and the sons of his own maternal uncle are known as his own Bandhavas; the sons of his father's father's sister, the sons of his father's mother's sister, and the sons of his father's maternal uncle are known as his father's Bandhavas; the sons of the mother's father's sister, the sons of the mother's mother's sister and the sons of the mother's maternal uncle are the mother's Bandhavas."

6. Of the agnates, Sakulyas and Bandhus, on failure of near heirs, those that may be somehow considered near may

* The admission here that Vijnaneswara's rule is founded on reasoning shows that some of the commentators delighted in useless wrangle and in trying to show their superior ingenuity over others, at the expense of good sense—Ed.

be considered as heir from what Gautama says generally thus: "Sapindas, Sagotras or those connected by descent from the same Rishi take the estate."

CHAPTER XI.

SECTION VI.

ON SUCCESSION ON FAILURE OF KINDRED.

On failure of Bandhus, the preceptor, the pupil and the fellow student take.

1. With reference to the question, who inherits in default of Bandhus, Yajnavalkya says: "A pupil and fellow-student." The words 'take the inheritance' being added as understood. A pupil is one who after having been invested with the sacred thread is taught the Vedas. A fellow-student is one who had the same preceptor (with the deceased). The Acharya (Yajnavalkya), it should be understood, has not specifically mentioned the preceptor (as heir) as he considered that in the matter of heirship on account of relationship of pupil and preceptor, while the pupil, who is the effect, has been mentioned, the principal cause, the preceptor by the analogy of the loaf and the staff, first becomes the heir on failure of Bandhus.

On failure of all heirs the king takes excepting a Brahmana's estate.

2. With reference to the question who is the heir on failure of the fellow-student, Manu says, "on failure of all (heirs) Brahmanas shall share the estate, (who are) versed on the three Vedas, pure and self controlled; thus the law is not violated. The property of a Brahmana must never be taken by the king, that is a settled rule. When Brahmanas of that character are not available, Narada referring to the king says: "If there be no heir of a Brahmana's estate, on his death, it must be given to a Brahmana. Otherwise the king is tainted with sin." 'On his death' means on the death of the owner of the estate. As regards the estate of one other than a Brahmana, on his decease, Manu says: "But the estate of men of other castes the king may take on failure of all heirs." The king is one who rules a country and the like. Narada after premising that on failure of all heirs, the estate goes to the king, says: "unless it should be the property of a Brahmana. A king devoted to the law must allot a maintenance to his women. Thus has the law of inheritance been declared." 'To his women' means to the women of a deceased person other than a Brahmana, who are incompetent to inherit. This is the meaning.

2. On failure of all heirs, the Sangrahakara mentions a distinction in regard to difference in caste thus: "In default of the father, the estate goes to the descendants of the father;

in default of such descendants, it goes to the descendants of the grandfather; in their default, it goes to the descendants of the greatgrandfather. In thiswise, the Sapindas of higher degree take. In their default, the Sakulyas, the preceptor, the pupil, and the fellow-student, a good Brahmana take in order. The estate of a Sudra, on failure of Samanodakas, is taken by the king and also the estate of a Kshatriya or a Vaisya, on failure of heirs up to the preceptor." The opinion of the Sangrahakara, which is in conformity with the opinion of Dhareswara, is that in default of the father, the estate goes to the descendants of the father According to my opinion however, on failure of the father, the estate goes to the mother, in her default, to the paternal grandmother and in her default, to the descendant of the father, such as the brother and his son This should be considered.

Sangrahakara's opinion.

3 All that has been thus stated about the succession to the estate of the sonless man, applies so far as is possible, to a owner whose investiture ceremony has not been performed or a temporary student, or one who had returned from the preceptor's house, or a house-holder, or one outside any one of the other orders of life or a Snataka.

CHAPTER XI.

SECTION XI.

SUCCESSION TO THE ESTATE OF ASCETICS ETC.

1. What has been stated before is because the Smritis prescribe other heirs for the estate of a perpetual student, a hermit and an ascetic. Yajnavalkya says: "the heirs to the property of a hermit, of an ascetic and of a student are in order the preceptor, a virtuous pupil and a spiritual brother who is *ekatirthi*." The term student here being associated with a hermit is intended for a perpetual student. 'Spiritual brother' means one having the same preceptor. Ekatirthi means one who has studied the same Shastras. In order means on failure of the first, the next in order takes.

CHAPTER XII.

ON REUNION.

1. On the this subject, Vrihaspati says: "He who having been divided is again living through affection together with his father or brother or with his uncle even, is said to be reunited with them." He, a son and the like, is said to be reunited, who having separated from

There can be reunion only with father, brother and uncle.

his father and the like again lives jointly with them, out of affection and the like cause. The purport is that there can be no reunion with the son of the uncle and the like who are other than the father, the brother and the uncle (specifically mentioned in the text).

2. As there cannot be complete reunion of persons only by living together, reunion is through union of wealth. By removing the separation of wealth which is the cause of separation, there can be reunion of separated coparceners only when their properties are mixed together in one heap as it was before their separation, and it is not merely living together. Therefore with reference to when there is again partition, the special mode is thus declared by Manu : "If brothers once divided and living again together, make a second partition, the division shall be equal, in such case there is no preferential share of the eldest." 'Living together' means residing together.

Reunion is union of property.

3. 'Make a second partition' in the above passage means when there is division of reunited property. Though by the mention of equal division, there cannot be a special share on account of primogeniture, still inequality on the ground of primogeniture has been expressly prohibited, in order to allow an unequal division when there was inequality of wealth among the coparceners when they reunited. Thus the division should in such case be unequal, in proportion to the wealth each brought in at the time of reunion. Thus reunion is for removing the separate ownership of property and not for removing the extent of the right of one.

Second partition must be proportionate to the property brought in by each.

4. Vrihaspati mentions another ground of unequal partition thus : "If among reunited coparceners, any one should acquire property through learning, valour and the like, a double share must be given to him ; the rest shall take equal shares." 'In this additional acquired property' should be considered as added to the passage. This is to prescribe the divisibility of property acquired, without detriment to the reunited property.

In self-acquired property, the acquirer has only a double share.

5. Among the reunited, of one dead before partition leaving sons and the like, the partition should be in accordance with the rule "among those whose fathers are dead, the allotment of shares, is according to the fathers." As there is a special rule, the ordinary rule of the widow and the daughter, &c., succeeding does not apply. Vrihaspati thus prescribes the rule : "When brothers formerly divided are

Brother and not widow &c. takes.

again living together through affection and arrange a second partition, the right of primogeniture does not accrue in that case. When any one brother should die or anyhow renounce worldly interests, his share is not lost : it is allotted to his uterine brother"

Even after reunion shares remain ascertained as in separate property

6. Before the first partition, in case of one coparcener dying or renouncing the world, his share is merged as on account of want of partition there is no ascertainment of the extent of his share of which partition is the cause, and therefore all the surviving coparceners take it, but after reunion, there is no want of ascertainment of the extent of the share of each of which partition is the cause, because such ascertainment of the share of each had been perfected by the first partition and it is not destroyed by reunion, which only removes the individual exclusive right to property. Thus all the coparceners take the entire wealth when reunited but at partition the share of each should be set apart.

The uterine brother takes.

7. The share which is thus set apart however, like the share of a separated person, does not go to the widow but goes to the reunited uterine brothers on the strength of special texts. The term uterine brother in the text is used in the singular number but it was intended to include the plural. Therefore Narada says : "If among several brothers one childless should die or become a religious ascetic, the rest shall divide his property, excepting the Stridhana." 'The rest' means the reunited uterine brothers from the text of Yajnavalkya : "A reunited brother shall keep the share of his reunited brother." The estate of the reunited brother is taken by his reunited brother and not by the widow and other heirs (of separated property) and among such brothers by the uterine one.

The widows should be maintained and daughters married.

8. This being the case what would become of the widows and unmarried daughters of the deceased ? In regard to this Narada says : "They shall make provisions for his women till they die, in case they remain faithful to the bed of their husbands. Should the women (not remain chaste) they must cut off that allowance. She who is the daughter, his father's share is for her maintenance : she takes that share till marriage. Afterwards the husband shall maintain her." The meaning of the second verse is that the surviving brothers should perform the marriage ceremony of the daughter of the coparcener who is dead or has renounced the world, and should also maintain her before that.

9. Where among the brothers, some only are reunited uterine brothers, the reunited uterine brothers only take. "The share of the reunited brothers belongs to them only;" this passage is introductory to the text. "If among several brothers one childless" etc.

The reunited full brother takes before the unreunited full brother.

10. Where however all the uterine brothers are unreunited and the half-brothers are reunited, the unreunited uterine brothers divide the heritage and not the reunited half-brothers, because of the text: "Even an nnreunited uterine brother shall obtain the property but not the (reunited brother) born of a different mother." From the word 'even' in 'even an unreunited uterine brother,' it appears that the taking of the heritage by a half-brother when reunited is prohibited.

Unreunited full brother takes before reunited half-brother.

11. When among the surviving brothers there are no uterine brothers, the reunited half-brothers take from the text of Vrihaspati: "when two brothers have reunited through affection, they shall mutually inherit each others property." In this passage, the words 'born of different mothers' should be considered as omitted to avoid repetition. As regards the text of Yajnavalkya "a (half-brother) being reunited may take the succession but not (a half-brother) not reunited," it refers to the case when there is no unterine brother. Thus every thing is reconciled.

Reunited half-brother takes on failure of full brothers and before unreunited half-brothers.

12. It is objected that if only on failure of unreunited uterine brothers, reunited half-brothers can take, it will be inconsistent with the text of Manu: "if the eldest or youngest brother is deprived of his share or if either of them dies after partition, his share is not lost. His unterine brothers having assembled together, shall equally divide it, and those brothers who were reunited with him and uterine sisters," because by the word 'and' (twice used) it appears that the uterine brothers and sisters and half-brother united with one another take the estate. Again when the construction is that with the reunited half-brother, uterine brothers and also uterine sisters assemble together and take equally the share which is not lost and from the words 'assemble together' the right of these person jointly to take the estate is manifest, the inconsistency is clear. Some to avoid this inconsistency thus explain the above text: 'that share not lost, the uterine brothers of reunited take, and not the unreunited brothers though uterine. On failure of reunited full-brothers, all full-brothers having assembled *i.e.* jointly, together *i.e.*, without inequality of shares, take. On failure of uterine brothers, uterine sisters

take. On their failure, the half-brothers take." This construction should be rejected because it purports to supply many supposed omissions and is not clear. Others again to avoid the inconsistency quote the text of Yajnavalkya: "a reunited half-brother may take the succession but not a half-brother unreunited. But even an unreunited uterine brother may obtain the property but not a reunited brother born of another mother," and construe the text to be of the same import as the text of Manu. They say: "a half-brother, meaning one born of a rival wife, being a reunited parcener, takes the estate; but a half-brother who was not reunited does not obtain the goods. Thus by the direct provisions of the text and by the exception, reunion is shown to be a reason for a half-brother's succession." In the text the words 'even may obtain when reunited' in the middle is connected with the word unreunited, the last word of the passage preceding it, and the purport is explained according to the meaning of the express words. (They say): "The term 'unreunited' is connected with what follows: and hence, even when one who was not again associated, may take the effects of a deceased reunited coparcener. Who is he? The author replies: "one united;" *i.e.*, one united by the identity of the womb (in which he was conceived), in other words, a full brother. It is thus declared that the relation by the whole blood is a reason for the succession of brothers." To that portion of the verse 'born of a different mother' the word *eva* (even) is added and is connected with the word 'reunited' in the middle portion of the verse and the passage is then explained according to the meaning of the express words. They further say: "The term 'reunited' likewise is connected with what follows: and here it signifies reunited (as a coparcener). The words "not the son of a different mother" must be interpreted by supplying the affirmative particle *eva* understood. Though he be a reunited parcener, yet being issue of a different mother, he shall not exclusively take the share of his reunited co-heir." Thus the purport of the text is explained in accordance with the text of Manu. They further say: "Thus by the occurrence of the word *Api* (though) in the sentence 'though not reunited' and by the denial implied in the restrictive affirmation (*eva*) understood in the other (one reunited may take &c.), it is shown that a whole brother not reunited and a half-brother being reunited shall take and share the estate, for the reason that both rights may subsist at the same instant."* Such interpretation may please those who make them and not the learned, for the wording of the text is absolutely incapable

* **All the above is a quotation from the Mitakshara whose opinion is refuted in the Smriti Chandrika.**

of such interpretation and it is based on the strength of one's own intellect. The inconsistency of the two texts of Manu and Yajnavalkya, as their meanings appear from the words, can only reconciled by applying them to different circumstances and not by trying to show that they are identical in meaning. The text of Manu applies to the case where there are other properties together with immovable property as in that case Prajapati says that the reunited and the unreunited should take together in these words : "Concealable wealth goes to the reunited, land and house are taken by the unreunited in due share." The meaning of the text is that half-brothers reunited shall take the concealed wealth and movable property such as slaves and the like. The unreunited uterine brothers and sisters take in due shares the house and the fields.

On failure of reunited half-brother reunited father or uncle take.

13. Thus from the concluding words, the text of Yajnavalkya should be understood to refer to the case where there is only immovable property or where there is only movable property. When there are no reunited half-brothers, then the father or the paternal uncle who is reunited takes, from the text of Gautama : "If one reunited dies, his reunited coparcener takes the heritage."

On failure of reunited father or uncle, unreunited half-brother takes.

14. When there are no father or uncle reunited, then the unreunited half-brother takes ; in his default, the father ; in his default, the mother ; in her default, the widow. So says Sankha : "The estate of a sonless deceased person, goes to the brother, in his default, both the parents will take it or the eldest widow." The estate of a sonless dsceased person, reunited with uncle, father or brother, on failure of such reunited parceners, goes to the reunited half-brother. This is the meaning. So says Narada : "The wealth of the reunited belongs to the reunited only. Therefore no one else inherits otherwise. Where no issue is left, it goes to others." The meaning is that 'otherwise' *i.e.*, when there are reunited parceners, the unreunited half-brother and the like do not take. When all the reunited members die without issue, 'others' *i.e.*, half-brothers, take the estate of the reunited. In such a case the order of succession is declared by Sankha who says that 'the estate goes to the brother &c.' The (qualification) eldest (in eldest widow in the text of Sankha), is used to indicate a widow having the qualifications of control of the senses and the like and not to exclude a junior widow. The particle *Va* (or) is used in the sense of in default of. When the result is the same, the particle *Va* means in the alternative. But here there can

not be an alternative on account of equality in regard to any such thing as ownership as that will be against the rule of Nyaya: "there cannot be an alternative in regard to the existence of a thing." Therefore here *Va* means in default of alternative (heirs mentioned before).

Brother, father, mother and widow take in order.

15. The order of succession (in such a case) is the following: on failure of the brother, the father takes; in his default, the mother; in her default, the widow. The order in this text is inconsistent with the order of succession to a divided coparcener prescribed in the rule "the widow, the daughters &c." and therefore to avoid inconsistency the rule now prescribed is considered applicable to the estate of a reunited coparcener. The rule of succession in regard to divided estate "the widow, the daughter &c.," which is in accordance with reason, is barred in the present case by the express words of the text of Sankha, because in this case no reason can be adduced in its support. In reference to this order, when there are the widow and Sapindas like the son of the brother, Narada prescribes: "when the husband is dead, in the absence of brother, father and mother, the widows and all the Sapindas take their own wealth in due shares" 'The widows' *i.e.*, those wives, the father, mother and brother of whose husband are wanting. In this compound word (brother father mother), by not placing of the father &c, who are more venerable than the brother, before the word 'brother' and by forming the compound contrary wise, Narada shows that the estate of the sonless reunited person, goes in the first instance to brother, father and brother and in their default to the chaste wife in all cases. Thus it follows that in reunited estate, the widows do not take in default of secondary sons but also in default of unreunited half-brother, father and mother.

Widows take only their husband's share, the share of others are taken by Sapindas.

16. The meaning of 'all the Sapindas' in the above text is the following. All the Sapindas like the brother's son of the sonless reunited person, other than his brother father and mother, take 'their own wealth' or the wealth which their father and the like mixed up at reunion with that of the sonless deceased person, on his death, with his widows in due share *i.e.*, the brother's sons take the brother's share and the widows take their husband's share and thus divide according to the share of each.

Sister married or unmarried take in default of the widow.

17. In default of the widow, the estate of the sonless reunited person is taken by his sister. Vrihaspati says: "She who is his sister is entitled to a share of his property. This is the rule regarding the estate of one without issue, who leaves no widow or father." She

may be married or unmarried and takes on the death of the uterine brother. In both cases the reason is apparent. The particle *cha* indicates that this is the rule in the case of one, who leaves no widow or father (besides being issueless).

Sapindas in order of nearness take after sisters.

18. In default of the sister, only the Sapindas, take the estate in the order mentioned in the text of Manu: "Always to the relative who is nearest to the deceased Sapinda, the estate shall belongs" as there is no other special rule. So also (Vrihaspati says): "When a man dies leaving no issue nor father nor mother, all his Sapindas shall divide his estate in due shares." The purport is that (the Sapindas take) his estate *i.e*, the estate of the reunited person, when he dies without issue and was born of a different mother and leaves none of the heirs, the brother and the like, specially mentioned for such a case.

Samanodokas and other heirs take after Sapindas.

19. On failure of Sapindas, the estate of the deceased reunited person goes to Samanodakas and others as in divided estate, because there is no special text about the heirs to the estate of the reunited, after the Sapindas.

CHAPTER XIII.

RIGHTS OF SONS BORN AFTER PARTITION.

Sons of pregnant wives of the father take their shares from the separated brother.

1. On this subject referring to the son born after partition during father's lifetime, Vishnu says: "Sons who have separated from their father should give a share to a brother born after partition." The meaning of this is that when there has been a partition, while the wives of the father were pregnant but not known to be so, the divided sons, shall give to the afterborn son, his share which they had taken, out of ignorance of his existence. The father need not give him a share out of what he had taken, but should take charge of the share thus given by the elder sons and live with the afterborn son, because as long as he is a minor, he should be protected. Therefore it is said that the sons who are separated from the father should give the share and not the father.

Afterborn son takes exclusively the father's share and the brothers need not give him a share.

2. Gautama says: "A son born after partition takes only the paternal" *i.e.*, share. This refers to the case where the father dies before the sons, who had separated from the father, give such son his share. The particle *Eva* (only) shows that the elder brothers need not give him any share but he takes only the father's share.

3. Vrihaspati says: "When the half-brothers or full brothers have become separated from the father, and they have brothers subsequently born, these latter shall take the

father's share." Here 'take the father's share' means take only the father's share. This refers to those who are born after having been conceived after partition.

4. He (Vrihaspati) enunciates the reason for the afterborn son taking his share only out of the father's share thus: "The elder son born before partition is not entitled to the father's share and the afterborn son is not entitled to the brother's share." 'Not entitled' means has no right. '*Amsha purbaja Pitre*' means that the sons born before are not entitled to the father's share because of partition with the father. 'The afterborn son is not entitled to the brother's share' because in the share of the brother, the afterborn son can possess no interest. This should be understood. With this object having enunciated the want of right of the elder brothers of the afterborn son in paternal property, on the strength of that, he Vrihaspati says: "All that is acquired by the father himself after having become separated from the sons belongs to the afterborn son; those born before partition are not entitled to it." The word 'all' is used to avoid the doubt that in what is acquired by the father after partition, the sons born before may have the share which they could not then take. Thus the sons born before partition and those born after have mutually no claim to each other's property on the ground of relationship. But there is an exception. He (Vrihaspati) says: "As in wealth, so also in debts and in gifts, pledges and sales, they are independent of each other, excepting mourning, libations and exequial rites." The meaning is that they have claims on each other in respect of acts of mourning, libation and exequial rites but not in respect of wealth and the like. *Adhana* means a pledge. In the matter of recovery of debts and the like, the want of right occurs only when there is no reunion as he (Vrihaspati) says: "When two coparceners have reunited through affection, they shall share the wealth of each other."

5. Again Manu says: "But a son born after partition shall alone take the paternal estate or if any (of the other sons) be reunited, he shall share with them." Here the word 'paternal' is to be added to the latter portion of the text and thus it is not inconsistent with the previous portion. That applies to the case where the father dies while living jointly with the afterborn son.

On partition, son born after the father's death takes a share from the other sons.

6. Yajnavalkya with reference to the case of a son born subsequent to partition after the death of the father says: "If a son be born of a wife of equal caste, after partition made, he is to share, or a share may be allotted to him from the visible estate after allowing for income and expenditure." That is, if after a

partition among brothers after the death of the father, while the pregnancy of father's wives was not manifest, a son is subsequently born, he is entitled to a share, or a share in partition, that is, he takes a share out of the property of all already divided.

The afterborn son gets a share out of the visible estate, such as household furniture, beasts of burden, milch cows, ornaments, servants and the like, after allowing for income and expenditure' *i e*, after allowing correction for income and expenditure The word 'visible estate' is used to bar the right of the afterborn son to share in concealed divided property Though no distinction is known in the case of the afterborn son, still as his existence at partition was difficult of ascertainment, a reduction of his share is reasonable. And as the difficulty in ascertainment of his existence was not through any fault of his own, the right given to him by the first hemistice is not unreasonable.

A person returning from a far country after partition receives half share.

7. There is the indication of the position that if a person returns from abroad after partition and no share had been given to him through that person's fault, and he takes a share subsequently, the person so returning after partition can only get a reduced share and not an equal share. Vrihaspati says that in such a case there should be a reduction of share: "If a man leaving the common country of the family resides in another country, when he returns he should without doubt be given only a half share" *Gotra sadharanam stvakva* means he who having left the country in which all the joint family resides, lives in a very distant country and the other members of the family have, after partitioning, taken all the estate in ignorance of his existence; when such a person afterwards returns, he should be given a half share out of the property already divided. This is the meaning. The indication is that the difference in the rule is because the ignorance of the existence of the person, who returns after partition, is through his fault. Therefore 'without doubt' is mentioned.

Likewise where partition had taken place in ignorance of the existence of one on account of long absence, who returns afterwards, he (Vrihaspati) says: "A debt, written bond, house and field which had descended from the paternal grandfather, in that the long absent coparcener is entitled to share, when he returns." 'Is entitled to share' means here takes a half share. 'When he returns' means returns after partition. He (Vrihaspati) says that the grandson and the like, returning after partition are entitled to participate in all ancestral property: "The third, the fifth or the seventh

descendant obtains share of the ancestral property, when his birth and name can be ascertained."

8. In case of certain persons returning after partition, even when there is ancestral property (of various kinds), he (Vrihaspati) says that they should obtain only the share of the land: "The agnates should give to his descendant on his return the ancestral land whom the respectable original residents and neighbours know to be the owner by tradition." 'On his return' *i e*, after partition. When a parcener returns before or after partition and claims to get his share, he is entitled to it only by first establishing his own right in property in the possession of others, by proof, human and divine, and not otherwise, so says he (Vrihaspati): "Whether a partition has been made or not, whenever a co-heir prefers a claim, if the property is proved to be common, he is entitled to share."

CHAPTER XIV.

ON THE DISTRIBUTION OF EFFECTS CONCEALED.

Property discovered after partition should be equally divided.

1. Manu says: "And if, after all the debts and assets have been duly distributed according to law, any property be afterwards discovered, one must divide it equally" When all the property, whether debts or assets, has been divided according to the rule prescribed (in the text of Vrihaspati): "all sons inherit the father's estate in equal shares but of those, he who is possessed of learning and good works is entitled to a greater share," and afterwards some little debt due to an absent person or assets, such as a thing kept as a pledge or as deposit with an absent person, come to light, on the return of such absent person, then they should be equally divided and a greater share should not be given to one possessed of learning and good works. This is the meaning. In the text by the mention of equality in the case of discovery after partition, it appears that in debts and assets known before partition, there may be unequal partition.

Fraudulently concealed property should be afterwards equally divided.

2. Thus if at the time of partition, if any one in order to defraud, keeps back any property making others to believe that it belonged to a stranger, and if after partition on enquiry, it is found to be their own, it should be divided equally; so says Katyayana: "What is concealed by any one and is afterwards discovered, the sons should, after the death of the father, divide with their brethren in equal shares." The meaning is that even after the death of the father, all the sons alone should divide the discovered property.

3. Likewise among coparceners living together, if any one misappropriates any property, which is after the partition discovered, it should be equally divided, so says Yajnavalkya: "Whatever property, after partition, may be discovered to have been misappropriated by one another, they all shall equally divide. This is settled." '*They all*' means all the coparceners, who had separated before.

Misappropriated property should be equally divided when discovered.

4. Like misappropriated property, property not properly divided also, should be equally divided; so says Katyayana: "Bhrigu says, what was misappropriated by one another and what was not properly divided and is subsequently discovered, shall be divided in equal shares." 'Not properly divided' means divided unequally, otherwise than as prescribed in the Shastras.

Property improperly divided should be equally divided again.

5. Like property misappropriated by one another and property improperly divided, property stolen by another or lost and afterwards recovered should also be equally divided.

Recovered stolen property should be divided equally.

6. But property acquired by a separated man belongs to the acquirer and not to all the co-heirs. So says he (Katyayana): "Whatever is acquired by a separated coparcener shall belong to him alone; but whatever was stolen or lost and subsequently recovered and also property mentioned before (in the preceding text) should be divided afresh." 'Property mentioned before' means property misappropriated by one another and property improperly divided. They have been again mentioned here by way of example. Thus these kinds of property should be divided like property mentioned in the preceding text. Thus by this it should be understood that property stolen by strangers or property lost and afterwards recovered should be equally divided.

7. Thus from the rule of Manu and others for fresh division of common property discovered after partition, it follows that the partition made before is valid. Therefore after partition, even though some little common property be discovered, still the separation of a person should be considered as having taken place before.

Subsequent discovery does not invalidate separation.

8. Manu says: "When after partition any common property is discovered, it should not be considered a valid partition; it should be made again." This text is applicable before the separated members have made increase or expenditure in respect of the divided property, otherwise it

would be inconsistent with all the other texts mentioned before. The object of prescribing a fresh partition is to allow additional shares, even in subsequently discovered property.

CHAPTER XV.

ON THE EFFECTS OF PARTITION.

Separated coparceners can dispose of their property at pleasure.

1. Narada says: "When a number of persons, who are the descendants of one man, are separate in religious duties, business transactions and working utensils and do not consult one another about their dealings, they are at liberty to perform, according to pleasure, all (such transactions as) the gift or sale of their own shares. They are masters of their own wealth." The meaning of it is as follows. If persons sprung from one man, when they are many and divided, who perform religious rites like the Agnihotra requiring money, without the consent of one another, and also perform temporal works, like agriculture, which are dependent on income and expenditure, and also have separate materials for work like household utensils, and perform their own works disregarding the fact that their brothers do not consent to them, and who are thus separate, sell or make a gift of their own shares, they are at liberty so to dispose of them at pleasure, since the separated are independent masters of their own wealth.

Text of Vrihaspati about immovable property interpreted.

2. Vrihaspati however says: "Co-heirs, whether divided in interest or not, have an equal claim to the immovable wealth; a single parcener has no power to give, mortgage or sell." 'Adhaman' means pledge (in this text). This text applies to the case where considering the immovable property to be difficult of division (it is kept joint) on the understanding that the produce should be divided in season, and the coparceners separate by dividing the rest of the property; because in such a case there is a want of independent ownership of each one of the coparceners in the immovable property.

3. He (Vrihaspati) speaks of another effect of partition thus: "The arrangement by which one coparcener has been enjoying his share should not be disturbed." And speaking of the King says: "If one contests afterwards a partition made willingly, he should be compelled by the King to abide by it and if he persists in his contention, he should be punished."

CHAPTER XVI.

ON THE EVIDENCE OF PARTITION.

1. On this subject Yajnavalkya says: "When partition is denied, the fact may be ascertained by the evidence of kinsmen, relatives and witnesses and by the written proof; or by separate possession of house or field." *Yautaka* means separate. The word 'partition' here includes legal incidents of partition. Hence Narada says: "When the fact of a legal partition is called into question, the decision should be founded on the testimony of kinsmen, the written deed recording the division and the separate transaction of affairs." When the very fact of the partition is denied by saying 'there has been no partition between us two' or the legality of partition is questioned by saying 'there has been no partition of the entire estate between us two,' it should be ascertained by the evidence of the agnates, of co-heirs, by the written deed of partition or by inferences drawn from separate transaction of affairs and the like. 'Separate transaction of affairs' means separate doing of acts like the performance of the *Vaisvadeva* sacrifice, the giving of alms and feeding of guests (*atithies*). With regard to the question, how does that show partition, he (Narada) says: "Among unseparated brothers, the performance of religious duties is single. When there is partition, they have to perform their religious duties separately." 'Dharma' in the text means religious duties like the Vaisvadeva sacrifice. So also says Vrihaspati: "The worship of the Manes, Gods and Brahmanas by those who reside jointly, cooking their food together, is single. But when they separate, these take place separately in each house." The separate performance of the Vaisvadeva sacrifice and the like cannot take place in an undivided family and thus it proves separation. Thus the statement that it is a ground for ascertaining the fact of partition in case of doubt, is reasonable.

2. The same author* says: "The acts of giving evidence, of becoming surety, of giving and taking may be mutually performed among themselves by the separated and not by the unseparated." 'Taking' means acceptance of presents. Thus the fact of partition may be inferred from the reciprocal bearing of testimony and like grounds. Therefore immediately after, it is said: "If (coparceners) should transact such matters as these publicly with their co-heirs, they may be presumed to be separate in affairs, even without any written deed of partition." 'Transact' means transact individually or jointly. Thus reciprocal borrowing of money among co-heirs shows separation, because that is not possible

* There is some mistake. This is a text of Narada not of Vrihaspati.

among the unseparated. To that effect says Yajnavalkya: "It is ordained that in an undivided family, among brethren, between husband and wife, between father and son, there cannot be suretyship, the relationship of debtor and creditor and the giving of evidence (mutually)." Hence the lender must be considered as separate with the borrower. Therefore Vrihaspati says: "Those who keep their income, expenditure and mortgage distinct and engage in mutual transactions in money-lending on interest, and those who take to trading (separately) are undoubtedly separate." *Kushida* means lending money for increase. *Vanikpatha* means trading. The word mutual applies to both (money-lending and trading). Such proof is admissible only on failure of direct evidence establishing the fact. So says he (Vrihaspati): "A violent crime, right to immovable property and a previous partition among co-heirs may be established by presumptive evidence, when there are no witnesses."

'Previous partition' means a partition that took place before the dispute regarding that partition. Presumptive evidence means inference, circumstances and the like. To show the reason for it, he (Vrihaspati) mentions certain circumstances showing the fact: "Family feud, rivalry, and discovery of a portion of the booty may be proof of a violent crime, individual enjoyment is proof of ownership in immovable property and separate property is proof of partition." 'Family feud' means enmity from the time of the ancestors 'Rivalry' means mutual malice. *Hodham* means discovery of property wrongfully taken away by force. 'Individual enjoyment' means enjoyment by the person himself who claims it.

3. On this matter Katyayana says: "When brothers live for ten years performing their religious ceremonies and business separately, they must be considered as having divided their patrimony." The term 'brothers' here denotes coparceners in general. 'Patrimony' means heritage of all descriptions. Even when the heritage has not been actually taken, (Katyayana says): "When a man sees another person dispossessing him and does not assert his right, his right to land is lost in twenty years and when another person enjoys personal property the right to it is lost in ten years." According to the result (mentioned above) in such a case (of separate possession for ten years), the coparceners should be considered as divided. Before the lapse of ten years however, partition should be ascertained with reference to rules mentioned before. When because of the possibility of the evidence being of a general character, the proof is not conclusively determinate, on the strength of the text 'when proof fails there may be ordeal,' there may be an ordeal, still recourse should not be had to an ordeal as

Vriddha Yajnavalkya ordains: "When there is a dispute about partition, it should be proved by the evidence of kinsmen, witnesses and written deeds. There can not be ordeal by divine tests."

4. With reference to the case when it is not possible to prove partition by proof, Manu says: "When there is doubt among the co-heirs about partition, it should be made again, even if they have been residing in separate places." The meaning is that this should be the case when the doubt cannot be removed by proof. He (Manu) however says: "Once is a partition of the inheritance made, once is a maiden given in marriage; once is a promise of gift made: All these three take place only once." This applies to the case where the doubt about partition can be removed by proof. Thus there is no fault of inconsistency.

End of the chapter on evidence of the existence of a partition, in the Smriti Chandrika.

The rules about partition of heritage are finished.

स्मृतिचन्द्रिका ।

अथ दायभागाख्यस्य पदस्य विधिरुच्यते ।

तत्र मनुः । एष स्त्रीपुंसयोरुक्तो धर्म्मो वो रतिसंहितः । आपद्यपत्यप्राप्तिश्च दायधर्म्मं निबोधतेति, दायाख्यद्रव्यविभागविषयं धर्म्मं मयोच्यमानं यूयं निबोधतेत्यर्थः ।

किं पुनर्दायाख्यं द्रव्यमित्यपेक्षिते निघण्टुकारेणोक्तं । विभक्तव्यं पितृद्रव्यं दायमाहुर्म्मनीषिण इति । विभागार्हे पित्रादिद्वारागते द्रव्ये रूढ़ा दायशब्द माहुरित्यर्थः । अतएव धारेश्वरेणोक्तं दायशब्देन पितृद्वारागतं मातृद्वारागतञ्च द्रव्यमेवोच्यत इति । च शब्दः सम्बन्ध्यन्तरद्वारागतमपि द्रव्यं दायशब्देनोच्यत इति सूचनार्थः । एवशब्दस्त्वलापन्न स्वत्वरूपमिति ज्ञापनार्थः सचायुक्तः, आपन्नस्वत्वरूपस्यैव द्रव्यस्य पितृद्वारा पुत्रपौत्रेष्वागतत्वात् । एवञ्चान्यसम्बन्धिनिधनेऽप्यन्यसम्बन्धिधने विभागार्हे दायशब्दो वर्त्तत इति निघण्टुकारेणोक्तमिति मन्तव्यम् ।

दायविषयधर्म्मश्चात्र विभागलक्षणोऽभिप्रेतः, स्त्रीपुंधर्म्मो विभागश्चेति पदोद्देशावसरे तस्यैव पूर्व्वमुक्तत्वात् । अतएव संग्रहकारः । पितृद्वारागतं द्रव्यं मातृद्वारागतञ्च यत्, कथितं दायशब्देन तद्विभागोऽधुनोच्यते । पितृद्वारागतादि यत् द्रव्यं दायशब्देन दायधर्म्ममिति समासान्तर्गतेन कथितं तस्य विभागोऽधुना स्त्रीपुधर्म्माख्यपदप्रतिपाद्यजातस्य प्रतिपादनानन्तरं मनुनोच्यते इति संग्रहश्लोकस्यार्थः ।

कथमुक्तमित्यपेक्षिते मनुः । ऊर्द्ध्वं पितुश्च मातुश्च समेत्य भ्रातरः समम् । भजेरन् पैतृकं रिक्थमनीशास्ते हि जीवतोरिति ।

अस्यापि तात्पर्य्यमाह संग्रहकारः । यस्मिन् काले यया भङ्ग्या यैरेव क्रियतेऽपि च । यादृशस्य च दायस्य यथाशास्त्रं प्रदर्श्यत इति । अस्यार्थः यादृशस्य दायस्य पैतृकमातृकादेर्यस्मिन् काले यया समविषमादिभङ्ग्या प्रकारेण, यैः पितृभ्रातृभगिन्यादिकर्त्तृभिर्विभागो वक्तव्यस्तदेतत् सर्व्वं हृद्यमन्वादि शास्त्रानतिक्रमेणोर्द्ध्वं पितुश्चेत्यादिना प्रदर्श्यत इति ।

अत्र ऊर्द्ध्वं पितुश्चेति, पितृधनविभागकाल उक्तः। मातुश्चेति, मातृधन-विभागकालः, तेन मातरि जीवन्त्यामपि पितृधनविभागः कार्य्यः। तथा मातुरूर्द्ध्वं पितरि जीवत्यपि मातृधनविभागः कार्य्यएव, अन्यतरधनविभागे उभयोरूर्द्ध्वं काल-प्रतीक्षणानुपयोगात्। तथाच संग्रहकारः। पितृद्रव्यविभागः स्याज्जीवन्त्यामपि मातरि। न स्वतन्त्रतया स्वाम्यं यस्मान्मातुः पतिं विना। मातृद्रव्यविभागोऽपि तथा पितरि जीवति सत्स्वपत्येषु यस्मान्न स्त्रीधनस्य पतिः पतिरिति। पितृभार्य्यायाः पतिं विना पतिमरणेऽपि यस्मात् पत्युर्द्धने न स्वतन्त्रत्वं न स्वामित्वं, यस्मादपत्येषु विद्यमानेषु स्त्रीधनस्य भार्य्याधनस्य भार्य्यामरणेऽपि पतिर्भर्त्ता न पतिर्न स्वामी, तस्मात्तयोर्मध्ये जीवत्यन्यतरस्मिन्नन्यतरधनविभागोयुक्त इत्यर्थः।

अनेन पितरि जीवति तद्द्रव्यविभागो मातरि जीवन्त्यां तद्द्रव्यविभागः पुत्रैर्न-कार्य्य इत्यर्थादुक्तं भवति। उक्तश्चान्त्यपादेन मानवे, अनीशास्ते हि जीवतोरिति। अनीशा अस्वतन्त्रा इत्यर्थः। तथाच शङ्खः, न जीवति पितरि पुत्रा ऋक्थं भजेरन् यद्यपि स्वाम्यं पश्चादधिगतं तैरनर्हा एव पुत्रा अर्थधर्म्मयोरस्वातन्त्र्यादिति। यद्यपि तैः पुत्रैः स्वकीयजन्मनः पश्चादनन्तरमेव, पितृधने स्वाम्यमधिगतं प्राप्तं तथापि जीवति पितरि नैवं भजेरन् यतोऽर्थधर्म्मयोरस्वातन्त्र्यात् विभागकर्त्तृतायामनर्हाः पुत्रा इत्यर्थः। अर्थास्वातन्त्र्यं अर्थादानप्रदानयोरस्वातन्त्र्यम्। तथाच हारीतः। जीवति पितरि पुत्राणामर्थादानविसर्गाक्षेपेष्वस्वातन्त्र्यमिति। अर्थादानमर्थोपभोगः। विसर्गोव्ययः। आक्षेपोदासादिपरिजनस्यापराधेषु शिक्षार्थमाक्षेपः। अस्वातन्त्र्यं पितुरनुज्ञामन्तरेण स्वेच्छयार्थादानादावप्रवृत्तिः। धर्म्मास्वातन्त्र्यमप्येवं पृथगिष्टा-पूर्त्तादावप्रवृत्तिः। एवञ्च पित्रानुज्ञातेन पुत्रेण धर्म्मकर्म्माग्निहोत्रादि कार्य्यं नान-नुज्ञातेनेति मन्तव्यम्।

यत्तु देवलोऽपि पितर्य्युपरते पुत्रा विभजेरन् पितुर्धनम्। अस्वाम्यं हि भवेदेषां निर्दोषे पितरि स्थितइति। अत्रास्वाम्यवचनमस्वातन्त्र्यप्रतिपादनार्थमिति मन्तव्यं निर्दोषे पितरि स्थिते पितृधने पुत्राणां जन्मना स्वाम्यस्य लोकसिद्धत्वात्। नन्वलौकिकं स्वाम्यं न पुत्राणां लोकसिद्धमिति ह्यथैवास्वाम्यं हि भवेदिति वचनान्तरस्य भङ्गः क्रियते। नच वाच्यं प्रतिज्ञामात्रं लौकिकस्वाम्यमिति, यतो न्यायमाह संग्रहकारः वर्त्तते यस्य यद्धस्ते तस्य स्वामी सएव न, अन्यस्वमन्यहस्तेतु चौर्य्याद्यैः किं न दृश्यते। तस्माच्छास्त्रतएव स्यात् स्वाम्यं नानुभवादपीति। यस्मादस्यान्तिके यद्धनं वर्त्तमानं दृष्टं तस्य सएव स्वामीत्यवधारयितुं न शक्यते परकीयस्यापि चौर्य्यादिना अन्यान्ति-कस्थस्य दर्शनेन तस्यैव स्वामित्वापत्तेः। तस्मात् शास्त्रैकसमधिगम्यं स्वाम्यं न

प्रमाणान्तरसमधिगम्यमपौत्यर्थः। किञ्च यदि यस्यान्तिके यद्दृष्टं तस्य सएव स्वामी, तर्ह्यस्य स्वमन्येनापहृतमिति न ब्रूयात् यस्यैवान्तिके दृष्टं तस्य च स्वामित्वात्। अपिच प्रमाणान्तरगम्ये स्वाम्ये ब्राह्मणस्याधिकं लब्धं चत्रियस्य विजितं निर्विष्टं वैश्यशूद्रयोरिति गौतमप्रणीते धर्मशास्त्रे यथाक्रमं वर्णानतिक्रमेन पृथक् पृथक् भिन्नप्रकारेण विहितोऽर्थागमो व्यर्थः स्यात् प्रमानान्तरस्यैव नियामकत्वात्।

एतद्बाधकद्वयमाह सएव, अस्यापहृतमेतेन न युक्तं वक्तुमन्यथा। विहितोऽर्थागमः शास्त्रे यथावर्णं पृथक् पृथक्। प्रतिग्रहाजिवाणिज्यशुश्रूषाख्या यथाक्रममिति। अस्येत्यादि वक्तुमित्यन्तेनात्र प्रथमबाधकमुक्तं, अवशिष्टेन व्यर्थः स्यादित्यध्याहार-सापेक्षेण द्वितीयमिति मन्तव्यम्।

एवञ्च स्वत्वमपि स्वाम्यवदेव शास्त्रैकसमधिगम्यं विज्ञेयं स्वाम्यस्वत्वयो स्तुल्ययोगक्षेमयोरेकतरमधिकृत्य साधितेऽपि शास्त्रैकसमधिगम्यत्वे, द्वयोरेव साधितत्वं भवति।

अतएव सम्प्रति स्वत्वमधिकृत्यापि शास्त्रैकसमधिगम्यत्वं द्वयोरेव साधयितुमाह सएव। नच स्वमुच्यते तद्यत् स्वेच्छया विनियुज्यते विनियोगोऽस्य सर्व्वस्य शास्त्रेणैव नियम्यत इति। अस्यायमर्थः न ब्रूमोऽन्तिके वर्त्तमानतया परिदृष्टं स्वमिति, किन्तु यद्वस्तु येन यथेष्टं विनियुज्यते तत्तस्य स्वमित्युचितं, ततश्च नातिप्रसङ्गादिदूषणम् अपहृतादेरयथेष्टविनियोज्यस्य स्वव्यवहाराप्रसङ्गादिति। नच वाच्यं यतः सर्व्वस्य स्वव्यवहारविषयस्यापि धनस्य विनियोगः शास्त्रेणैव गुरुभृत्यादेर्भरणादौ नियम्यत इति। यथेष्टविनियोज्यं किमपि नास्ति प्रपञ्चितं चैतद्धारेश्वरसूरिणा।

तस्मात् अस्वाम्यंहि भवेदेषां निर्दोषे पितरि स्थित इति धर्मशास्त्रादस्वाम्ये सिद्धे यद्यपि पश्चादधिगतं तैरिति शङ्खवचनस्यैवान्यथा व्याख्यान्याय्या।

अत्रोच्यते न ब्रूमो यथेष्टविनियोज्यं स्वमिति किन्तु यथेष्टविनियोगार्हं स्वत्वमिति ब्रूमहे। ननु शास्त्रेण गुरुभृत्यादेर्भरणादौ विनियोगनियमात् यथा यथेष्टविनियोज्यत्वं दुर्निरूपं तथा यथेष्टविनियोगार्हत्वमपि यथेष्टविनियोगाभावादेव दुर्निरूपं, मैवं यथेष्टविनियोगाभावेऽपि यद्येनार्ज्जितं तत्तस्य यथेष्टविनियोगार्हं मित्येवं निरूप्यते। तथाच न्यायविवेके भवनाथेनैव निरूपितं तच्च तस्य तदर्हं यद्येनार्ज्जितमिति ग्रन्थेन, तस्यायमर्थः। यद्वस्तु येन पुरुषेनार्ज्जितं तद्वस्तु तस्य पुरुषस्य तदर्हं यथेष्टविनि-योगार्हमिति स्वत्वनिरूपणवद्यथेष्टविनियोगार्हत्वनिरूपणञ्चाम्नायते सुग्रन्थमिति शब्दार्थः। नन्वेवं चौरस्य चौर्य्यार्जितं यथेष्टविनियोगार्हं स्यादित्याशङ्काह सएव, लौकिकमिदञ्चार्जनं जन्मादीति। जन्मक्रयसंविभागपरिग्रहाधिगमाद्येन अनिन्द्

प्रथमलोकसिद्धमर्जनमेव स्वत्वापादकं न पुनश्चौर्य्यादिकमित्यर्थः। अतिप्रसङ्गपरिहारोऽपि सुशक इति च शब्दार्थः। नन्विदमर्जनमनिन्द्यं प्रथमलोकसिद्धमिदमित्यत्र किं नियामकमित्याशङ्क्याह स एव, अतएवानिन्द्यं प्रथमलोकविषय इतिव्यवस्थितनिबन्धनार्थो स्मृतिः, व्याकरणादिस्मृतिवदिति।

यत एवानिन्द्यं प्रथमलोकसिद्धार्जनमेव स्वत्वापादकं ततश्च तदेव लौकिकवैदिकस्वव्यवहारसिद्धार्थमवश्यं ज्ञेयम् अतएवानिन्द्यं प्रथमलोकधीगोचरतया व्यवस्थितार्जनानां स्वग्रन्थे निबन्धनार्थो स्मृतिः स्वामी रिक्थक्रयसंविभागपरिग्रहाधिगमेषु, ब्राह्मणस्याधिकं लब्धं क्षत्रियस्य विजितं निर्व्विष्टं वैश्यशूद्रयो रित्यादिका साधुशब्दनिबन्धनार्थव्याकरणस्मृतिवत् कृतेत्यर्थः। ऋक्थं ऋक्थार्ज्जनं, पित्रादिधने स्वामित्वापादकं पुत्रादिजन्मेति यावत् तथाच पैतृकधनलाभहेतुत्वेनोक्तं गौतमेन उत्पत्त्यैवार्थं स्वामित्वात् लभत इत्याचार्य्या इति। उत्पत्त्यैव मातृगर्भे शरीरोत्पत्त्यैवेत्यर्थः। क्रयः प्रसिद्धः, संविभागः पित्रादिधने विशेषनिष्ठस्वामित्वसम्पादको विभागः। परिग्रहः कामनाधिगतजलतृणकाष्ठादेरन्येनास्वीकृतस्य स्वीकारः। अधिगमो निध्यादेरुपलब्धिः। एतेषु निमित्तेषु सत्सु, पुत्रादिः क्रेता संविभक्ता परिग्रहीता अधिगन्ता च यथाक्रमेण पित्रादिधनस्य क्रीतस्य संविभक्तांशस्य परिगृहीतस्य अधिगतस्यच स्वामी भवति। तथा लब्धं परिगृहीतं ब्राह्मणस्याधिकं प्रातिस्विकमर्ज्जितम्। एवं क्षत्रियस्य विजितं विजयलब्धम्। एवं वैश्यस्य निर्व्विष्टं कृष्यादौ भृतिरूपेण लब्धम्। शूद्रस्यापि निर्व्विष्टं द्विजशुश्रूषादौ भृतिरूपेण लब्धं प्रातिस्विकमर्ज्जितमित्येवमर्जननिबन्धनाया गौतमस्मृतेरर्थो विज्ञेयः। एवञ्च यत् संग्रहकारेणोक्तं वर्त्तते यस्य यद्वस्तु इत्यादिना, यच्च धारेश्वरसूरिणा प्रपञ्चितं तत् सर्व्वमपास्तं वेदितव्यम्। ततश्चास्वाम्यं हि भवेदेषां निर्द्दोषे पितरि स्थित इति वचनस्यैव शङ्खवचनविरोधपरिहारो युक्त एवेत्यलमतिबहुना।

प्रकृतमुच्यते। निर्दोषग्रहणात् पितरि सदोषे स्थितेऽपि सति पुत्राणां न तत्पारतन्त्र्यमिति दर्शयति। तेन पितरि स्थिते व्यासक्तत्वादिदोषे सत्यर्थादानविसर्गादौ ज्येष्ठस्य स्वातन्त्र्यादनुज्ञायाञ्च ज्येष्ठाधीनस्वत्वमवगन्तव्यम्। अतएव शङ्खलिखिताभ्यामुक्तम्। पितर्य्यशक्ते कुटुम्बव्यवहारान् ज्येष्ठः प्रतिकुर्य्यादनन्तरो वा कार्य्यज्ञ स्तदनुमतेनेति, तदनुमतेन ज्येष्ठानुमतेन तदानीं तस्यैव स्वातन्त्र्यात् तदनन्तरग्रहणमनुजोपलक्षणार्थं कार्य्यज्ञस्यैवात्र विवक्षितत्वात्। अशक्तग्रहणञ्च दीनादेरुपलक्षणार्थम् अतएव हारीतः। कामं दीने प्रोषिते चार्त्तिगते वा ज्येष्ठोऽर्थांश्चिन्तयेदिति। दीन इत्यादौ जीवति पितरीति पदद्वयमनुषज्यते तस्य

पूर्व्ववाक्ये शक्त्यादिद्याकाङ्क्षितत्वात्। काममिति वदन् पितृपरतन्त्रत्वं तदानी-मपगतमिति दर्शयति गतेच पितृपरतन्त्रत्वे पुत्राणां पितृधनविभागकर्त्तृत्वाईता जातेति पितृधनविभागोऽपि तदानीं पुत्राणामेवेच्छया भवितुमर्हति। अतएव शङ्खः अकामे पितरि रिक्थविभागो वृद्धे विपरीतचेतसि दीर्घरोगिणि चेति। अकामे पितरि विभागेच्छाशून्ये पितरीत्यर्थः, वृद्धे अतिवृद्धे, विपरीतचेतसि अप्रकृतिस्थे, एतदुक्तं भवति वार्द्धक्यादिना पितर्यस्वतन्त्रतामापन्ने तदनिच्छया पितृधनविभागः पुत्राणामिच्छयैव भवतीति। दीर्घरोगग्रहणं दीर्घकोपादिकुपलक्षणार्थम्। अतएव नारदः। व्याधितः कुपितश्चैव विषयासक्तमानसः। अन्यथाशास्त्रकारीच न विभागे पिता प्रभुः, अपि तु तत्पुत्रा एव प्रभव इति शेषः। अन्यथाशास्त्रकारी श्रुत्याचारव्यपेतमार्गवर्त्ती।

निर्द्दोषे पितरि स्थितेऽपि क्वचिद्विषये पुत्रकर्त्तृकविभागमाह सएव। अतऊर्द्धं पितुः पुत्रा विभजेरन् धनं समम्। मातुर्निवृत्ते रजसि प्रत्तासु भगिनीषु च। निवृत्तेवापि रमणात् पितर्य्युपरतस्पृहइति। यद्यपि अतऊर्द्धमित्यादि सममित्यन्त-माद्यवाक्यमजीवद्विभागकालादिबोधनार्थं तथाप्युत्तरवाक्यपूरणोपयोगार्थं पठितम्। पित्रोरपत्योत्पत्तिसामर्थ्याभावनिश्चये अपत्यविवाहकृत्ये च कृते पितुर्द्धनास्पृहायां पुत्रा एव विभजेरन्निति द्वितीयवाक्यस्यार्थः। बौधायनः पितुरपि कर्त्तृत्वमनुमतिद्वारे-णाह पितुरनुमत्या दायविभाग इति। कथं तर्हि पितृकर्त्तृको विभाग इत्यपेक्षिते नारदः। पितेव वा स्वयं पुत्रान् विभजेद्वयसिस्थित इति। वयसिस्थित इति वदन्नप्रतिहतस्वातन्त्र्ययुक्तपितृविषय एवायं नियम इति दर्शयति। एवकारेण पितृकर्त्तृकत्वनियमलाभेऽपि स्वयग्रहणादस्मिन् विषये पुत्राणामनुमतिकर्त्तृत्वमपि निरस्तम्। वा शब्दः सहवासेन विकल्पार्थो न पुनः पुत्रादिकर्त्तृत्वान्तरेण, सहवासस्यैवात्र पक्षान्तरत्वात्, तथाच व्यासः। भ्रातृणां जीवतोः पित्रोः सहवासो विधीयतइति।

पितुरूर्द्ध्वमपि भ्रातृणामन्योन्यमर्थोपचयार्थं सहवासोऽस्त्येव। तथाच शङ्खलिखितौ। कामं सह वसेयुरेकमताः संहता वृद्धिमापद्येरन्निति। पृथक् पृथक् व्ययाभावादिति भावः। विभागेतु धर्म्मवृद्धिमापद्येरन्ननुमत्याह गौतमः। विभागेतु धर्म्मवृद्धिरिति। कथमित्यपेक्षिते नारदः। भ्रातृणामविभक्तानामेको धर्म्मः प्रवर्त्तते। विभागे सति धर्म्मोऽपि भवेदेषां पृथक् पृथगिति।

धर्म्मः पितृदेवद्विजार्च्चनजन्यः। तथाच वृहस्पतिः। एकपाकेन वसतां पितृदेवद्विजार्च्चनम्। एकं भवेद्विभक्तानां तदेव स्याद्गृहे गृहे। मन्वग्निहोत्रा-

दिजन्योऽपि धर्मो विभक्तानां वर्द्धते नाविभक्तानां स्वत्वाभावेन, विभक्तानां स्वसाध्याग्निहोत्रादिधर्म्मोऽपि, विभागपक्षोत्कृष्टत्वे हेतुतया वक्तव्यः। उक्तञ्च तथैव संग्रहकारेण। क्रियते स्वं विभागेन पुत्राणां पैतृकं धनम्। स्वत्वे सति प्रवर्त्तन्ते तस्माद्धर्म्मा: पृथक्क्रियाः। प्रवर्त्तन्ते स्वसाध्याग्निहोत्रादय इति शेषः।

अत्रोच्यते पैतृकं धनं विभागेन पुत्राणां क्रियत इत्येतदनुपपन्नं जननेनैव स्वं क्रियतइति प्रागेव प्रतिपादितत्वात्, ततश्चाविभक्तानां स्वत्वमस्तीति स्वसाध्याग्निहोत्रादिजन्यो धर्म्मः सम्पद्यतएवेति न कश्चिद्विभागपक्षस्याविभागपक्षाद्विशेष इति पूर्व्वोक्तप्रकारेणैव विभागपक्षे धर्म्मवृद्धि र्गौतमादिभिरुक्तेति दिक्।

इति स्मृतिचन्द्रिकायां विभागकालकर्त्तृप्रतिपादनम्।

अथ जीवद्विभागप्रकारः।

तत्र शङ्खलिखितौ। जीवति वा पितरि रिक्थविभागोऽनुमतः प्रकाशं वा मथो वा धर्म्मत इति। यो जीवद्विभागपक्षोऽनुमतः स तावत् प्रकाशं बन्ध्वादिसमक्षं यथा भवति यथा मिथो वा रहसि वा धर्म्मतो धर्म्मादनपेतेन प्रकारेण कार्य्य इत्यर्थः।

तमेव प्रकारमाह कात्यायनः। सकलं द्रव्यजातं यद्भागैर्गृह्णन्ति तत्समैः। पितरो भ्रातरश्चैव विभागो धर्म्य उच्यते। यन्मध्यगं द्रव्यजातं तत् सकलं पित्रादयो यत्र विभागे समैरेव भागैर्गृह्णन्ति स विभागः शास्त्रावगतत्वात् धर्म्मो धर्म्मादनपेत धर्म्म इत्युच्यतइत्यर्थः।

ज्येष्ठभ्रातुर्भागाधिक्येन विभागान्तरतो धर्म्यं विभागं वक्तुं बौधायनेनोक्तम्। पुत्रेभ्यो दायं व्यभजदिति। समोंऽशः सर्व्वेषामविशेषादिति। मनुः। पुत्रेभ्यो दायं व्यभजदिति जीवद्विभागाभिधायके ब्राह्मणे भागविशेषानभिधानात् समं स्यादश्रुतत्वादिति न्यायबलेनाभ्यादेव शास्त्रात् सर्व्वेषां पिता पुत्राणां सम एवांशो ऽवगम्यत इत्यर्थः। ज्येष्ठत्वादाधिक्यं श्रुत्यन्तरमित्याह स एवां धनमेकमेकमुद्वरेज्ज्येष्ठः

तथाज्येष्ठपुत्रं धनेन निरवसाययतीति श्रुतिरिति धनमेकमेकमिति वदन् धनेनेत्येकवचनं श्रुतिवाक्यगतं विवक्षितमिति दर्शयति निरवसाययतीति तोषयतीत्यर्थः। तथापस्तम्बः, एकधनेन ज्येष्ठं तोषयित्वा जीवन् पुत्रेभ्यो दायं विभजेत् सममिति। जीवन् पिता श्रेष्ठेनैकेन धनेन मध्यगद्रव्यादुत्कृष्टतरेण ज्येष्ठं प्रथमपुत्रं तोषयित्वा ऽवशिष्टमात्मसहितज्येष्ठादिपुत्रेभ्यः समत्वेनैव विभजेदित्यर्थः।

एवञ्च प्रथमोत्पन्नतया तदर्थमेवोद्धारः स चैकस्यैव सर्व्वधर्म्मज्येष्ठस्य, तदवशिष्टस्य समत्वेनैव विभाग इति विधानान्तरमुक्तमित्यवगन्तव्यम्। एवं कात्यायनबौधायनोक्तेऽप्युभयोर्मध्ये यं पक्षं पिता कर्त्तुमिच्छति तमेव पक्षं कुर्य्यात्, पितृकर्त्तृकेऽपि विभागे तस्यैव प्रभुत्वेन तदिच्छायाएव पक्षविशेषपरिग्रहकारणत्वात्।

तदेतत् सर्व्वं संक्षिप्य याज्ञवल्क्येनोक्तम्। विभागञ्चेत् पिता कुर्य्यादिच्छया विभजेत् सुतान्। ज्येष्ठं वा श्रेष्ठभागेन सर्व्वे वा स्युः समांशिन इति। अनेनार्द्धेन प्राङ्निरूपितपक्षद्वयं पूर्व्वोक्तक्रमव्यत्यासेनोक्तम्। तयोरन्यतरपक्षपरिग्रहे पितुरिच्छैव कारणं न पुनः पुत्राणामिच्छापि कारणमिति पूर्व्वार्द्धेनोक्तमिति मन्तव्यम्।

एवञ्चात्मेच्छया यः पक्षः पित्रा परिगृहीतः स सुतैरनपेक्षितोऽप्यनुमन्तव्य एव। तथाच स एव। न्यूनाधिकविभक्तानां धर्म्म्यः पितृकृतः स्मृत इति। न्यूनतया ये विभक्ता अज्येष्ठा स्तेषां श्रेष्ठभागाभावादधिकतया विभक्ता ज्येष्ठा स्तेषां पितुरिच्छया स्वीकृतो यद्युद्धारपूर्व्वको विभागस्तदा सोऽपि शास्त्रमूलत्वेन तद्धर्म्म्यतया प्राक् स्मृत इति तैरप्यनुमन्तव्य इत्यर्थः। नारदोऽप्यमुमेवार्थमाह। पित्रैव तु विभक्ता ये समन्यूनाधिकै र्धनैः। तेषां स एव धर्म्म्यः स्यात् सर्व्वस्य हि पिता प्रभुरिति। समधनैः कृतो यो विभागप्रकारः तत्र पित्रा मह्यमेकमधिकं श्रेष्ठं धनं न दत्तमिति ज्येष्ठेनानुशयो न कार्य्यः, तथा यः पित्रा कृतो न्यूनाधिकधनैर्व्विभाग स्तत्र पित्रास्मभ्यं न्यूनं दत्तं ज्येष्ठायाधिकमिति अनुजैरनुशयो न कार्य्यः पितुरिच्छया प्राप्तस्यैवात्र धर्म्म्यत्वात्। कुतस्तस्यैव धर्म्म्यत्वमित्यपेक्षिते इत्युक्तं सर्व्वस्य हि पिता प्रभुरिति सर्व्वविधस्य पितृकर्त्तृकविभागस्य यतः पितैव प्रभुरित्यर्थः।

ये पुनर्धर्म्म्यं विभागमतिक्रामन्ति ते दण्ड्याः। यथाह बृहस्पतिः समन्यूनाधिका भागाः पित्रा येषां प्रकल्पिताः, तथैव ते पालनीया विनेया स्ते स्युरन्यथा। पित्रा शास्त्रावगतप्रकारेणेति शेषः। प्रकारान्तरेण कल्पितानाम् अधर्म्म्यत्वेनापालनीयत्वात्। नहि स्वेच्छयैव स्वार्ज्जितधनेऽपि कस्यचित् पुत्रस्य निष्कासनेन कस्यचित् पुत्रस्य कपर्द्दिकामात्रेण विभागः कृतो धर्म्म्यो भवितुमर्हति। अनिन्द्यं प्रथम-

विभागस्यैव स्वस्य व्यवस्थापकत्वात्। नच इच्छया विषमविभागोऽनिन्द्यः प्रथम एव इच्छया विभजेत् सुतानिति निबद्धत्वादिति वाच्यं अस्याः स्मृते स्तथाविधविभागानिबन्धकत्वात्। तथाहि स्वत स्तावदयुक्तत्वेऽपि यदपरार्केणास्याः स्मृतेः परिशेषात् तथैव विभागप्रतिपादनपरत्वमापादितं तत् प्राक् प्रतिपादित सम्यगर्थसद्भावे सति अयास्त्वमिति। स्वेच्छामात्रेण, पित्रा स्वार्जितधनेऽपि कृतो विषमविभागः पुत्रैरणीये सत्यपालनीय इति सिद्धम्।

यत् पुनरपरार्केणोक्तं ज्येष्ठं श्रेष्ठभागेनेत्येतदुद्धारेण प्रदर्शनार्थं तेन ज्येष्ठस्य विंश उद्धार इत्यादिभि र्मन्वादिशास्त्रैः यावन्त उद्धारप्रकारा विहिता स्ते सर्व्वे चोपलक्षिता भवन्तीति तदप्यपास्तम्। तमेकमेकमुद्धरेज्ज्येष्ठ इति जीवद्विभागो-क्तोद्धारविशेषपरत्वस्यैव न्याय्यत्वात्।

बृहस्पतिस्तु पितु र्भागाधिक्येन प्रकारान्तरमाह। जीवद्विभागेतु पिता गृह्णीतांशद्वयं स्वयमिति। पिता विभजन्निति शेषः। तथाच नारदः। द्वावंशौ प्रतिपद्येत विभजन्नात्मनः पितेति। विभजन्निति वदन् पितृकर्त्तृके जीवद्विभागे भागद्वयमात्मनो न पुत्रकर्त्तृके जीवद्विभाग इति दर्शयति। पितृकर्त्तृके विभागे प्यात्मनो भागद्वयग्रहणे विशेषमाहतुः शङ्खलिखितौ। स यद्येकपुत्रः स्यात् द्वौ भागावात्मनः कुर्य्यादिति। स इति प्रकृतः पिता प्रत्यवमृश्यते। एकपुत्रः स्यादिति अतिक्रान्तपुत्रलाभकालः स्याद् गलितवयस्कः स्यादिति यावत्।

अतएव बहुपुत्रसद्भावविषयेऽपि गलितवयस्कस्य इष्टभागग्रहणेन पिता पुत्राणां भागवैषम्यमाह हारीतः। जीवन्नेव वा विभज्य वनमाश्रयेत् वृद्धाश्रमं वा गच्छेत् स्वल्पेन वा सविभज्य भूयिष्ठमादाय वसेत् यद्युपदस्येत् पुनस्तेभ्यो गृह्णीयात् चीर्णांश विभजेदिति। स्वल्पेन भागेनात्मीयभागार्थप्रमाणकेन पिता पुत्रान् विभज्य द्वे गुणेन भूयिष्ठभागं स्वयमादाय गृहएव वसेत् एवं वसन् यदि कथञ्चिदुपदस्येत् अशनाद्य-भावेन क्षीणः स्यात् पिता तदा तेभ्यः पुत्रेभ्यः स्वदत्तभागवशात् उपचितद्रव्येभ्यः सकाशात् स्वकुटुम्बभरणपर्य्याप्तं धनं पुन र्गृह्णीयात्, अथ पुत्रा एव अशनाद्यभावेन क्षीणा स्तदा तान् पुनः पूर्व्ववद्विभजेदित्यर्थः। वनमाश्रयेत् वानप्रस्थः स्यात्। वृद्धाश्रमः चतुर्थाश्रमः। वृद्धाश्रममिति वदन् गलितवयस्कविषयमिति दर्शयति एवञ्चापरवयसि पुत्राश्रयार्थत्वात् यथा पिता पुत्रं चित उपधावति तादृगेव तदिति श्रुतिविषयत्वं पितुर्युक्तं स्वल्पभागग्रहणात् यथा पुत्रः पितरं चित उपधावति तादृगेव तदिति श्रुतिविषयत्वं पुत्रस्य युक्तमित्यभिसन्धायैव यद्युपदस्येदित्यादिना यथा पिता पुत्रं तथा पुत्रः पितरम् इत्यादि श्रुतिद्वयार्थ उक्त इति मन्तव्यम्।

अतएव पुनस्तेभ्यो गृह्णीयात् चोर्णांश्च विभजेदिति स्वकीयस्मृत्यो रेवंविध श्रुतिमूलत्वं दर्शयितुं एतत् समानार्थं श्रुतिद्वयं प्रतीकेन तेनैव दर्शितम्। अथाप्यत्र ग्रहोपादानोपाधिकश्रुतिमुदाहरन्ति। पिताग्रायणः पुत्रा इतरे ग्रहाः, यद्यग्रायणः स्कन्दादुपवादश्येत् इतरेभ्यो गृह्णीयात् यदीतरे ग्रहाः स्कन्देयु रुपदश्येयु र्व्वेति व्याख्यातमिति। ग्रहोपादानोपाधिकीं सोमग्रहविशेषसमाधिक्रियां अग्रायणः सोमग्रहविशेषः। इतरे त्वदग्रायणव्यतिरिक्ता ग्रहाः ऐन्द्रवायव्यादयः। उपवादश्येत् उपदश्येद्वा शुष्येतेति यावत्। स्कन्देयुरिति लकारो ऽत्रावशिष्टश्रुतिभागप्रतीकार्थः। व्याख्यातप्रतीकेन प्रदर्शितश्रुतिभागस्य व्याख्या कृतास्माभि र्यद्युपदश्येत् पुनस्तेभ्यो गृह्णीयात् चीर्णांश्च विभजेदिति वाक्यद्वयेनेत्यर्थः।

अत्रापि पितुरिच्छया समविभागः पक्षे कार्य्यः। सकलं द्रव्यजातं यद्भागं गृह्णन्ति तत्समैः। पितरौ भ्रातरश्चैव विभागो धर्म्म्य उच्यते इति जीवद्विभागं वदता कात्यायनेन समविभागपक्षस्यासार्व्वत्रिकत्वेनाभिधानात् तत्रात्र विषये स्वकीयेच्छया पिता समविभागपक्षं कुर्य्यात् तदात्वाह याज्ञवल्क्यः यदि कुर्य्यात् समानांशान् पत्न्यः कार्य्याः समांशिकाः, न दत्तं स्त्रीधनं यासां भर्त्रा वा श्वशुरेण वेति। वार्द्धक्येऽप्यात्मना सह समविभागपक्षमिच्छया पिता कुर्य्यात्तदात्मभागेन सह तत्समानभागं प्रतिपत्नि गृह्णीयादित्यर्थः। एवञ्च जायापत्योर्न विभागो विद्यतइति हारीतवचनविरोधशङ्कापि परिहृतेति सर्व्वमनवद्यम्।

यत्र पुत्रस्य पितृधने धनार्ज्जनसमर्थतया स्वांशं ग्रहीतु नेच्छा तत्र यावत् स्वीकरोति तावत्तस्मै दत्त्वा पित्रा पृथक्क्रिया कार्य्येत्याह सएव। शक्तस्यानीहमानस्य किञ्चिद्दत्त्वा पृथक्क्रियेति। यदा पुन र्जीवति पितरि पुत्रकर्त्तृको विभागः क्रियते तदा सकलं द्रव्यजातमित्यादि कात्यायनवचनोक्तं समविभागप्रकारेणैव कार्य्यः पुत्रकर्त्तृके जीवद्विभागे प्रकारान्तरप्रतिपादक शास्त्रान्तराभावात् पितुः पुत्रा विभजेरन् धनं सममित्यनुवृत्तौ मातु र्निवृत्ते रजसीत्यादिना समविभागनियमस्य नारदोक्तस्य पूर्व्वप्रकरणे पुत्रकर्त्तृकजीवद्विभागाभिधानावसरे दर्शितत्वाच्च।

इति स्मृतिचन्द्रिकायां जीवद्विभागप्रकारः।

अथ अजीवद्विभागप्रकार: ।

अथाजीवद्विभागे समविभागप्रकार: ।

तत्र पितरीत्यनुवृत्तौ हारीत: । समानो मृते ऋक्थविभागइति । मृते पितरि भ्रातृभि: क्रियमाण ऋक्थविभाग: समभागेनैव कार्य्य इत्यर्थ: । पैठीनसिरपि । पैतृके विभज्यमाने दायाद्ये भ्रातृणां समो विभाग इति । दायाद्ये दायधने इत्यर्थ: ।

नच भ्रातृणामिति बहुवचनबलात् द्वयो र्भ्रात्रो रविभागएवेति वाच्यं । मध्यग-द्रव्यस्वामिसमर्पणमात्रपरत्वात् तस्य । अतएव मध्यगद्रव्यस्वामिन एकस्यैव दाय-विभागो देवलेन प्रतिषिध्यते । एकएव सवर्ण: स्याद्दायीऽत्र न विभज्यतइति असवर्णानेकभ्रातृविषये क्वचिद्दायो न विभज्यत इति दर्शयितुं सवर्ण: स्यादित्युक्तम् । उक्तञ्च मनुना ब्राह्मणक्षत्रियविशां शूद्रापुत्रो न भागभागिति । एतदुक्तं भवति, शूद्राशूद्रभ्रात्रोरनेकत्वेऽपि विवाहशून्यशूद्रापुत्र ऋक्थं नार्हति अशूद्रएव सर्व्वं गृह्णीयादिति ।

एवं विभागानधिकारिसवर्णसाहित्यादनेकेष्वप्येक एव गृह्णीयात् । तथाच संग्रहकार: । सर्व्वमेव हरेत् ज्येष्ठो ऽनुजेष्वनधिकारिषु, मध्यमो वा कनिष्ठो वा ज्यायस्स्वनधिकारिणि ।

नन्वधिकारिसवर्णानेकभ्रातृविषयेऽपि दायो न विभज्यते । यदाह मनु: । ज्येष्ठएव तु गृह्णीयात् पित्र्यं धनमशेषत: । शेषास्तमुपजीवेयु र्यथैव पितरं तथेति । नचैतद्वचनं सहवासपक्षविचारार्थमिति वाच्यं, यतस्तदर्थमन्यदेव वचनं एवं सहवसे-युर्व्वेति तेनैव प्रणीतमास्ते । सत्यमास्ते । तथाहि प्रगल्भभ्रातृषु सहवासपक्षविचारार्थमेव सहवसेयुर्व्वेत्यादेश: अप्रगल्भानुजेषु तु तत्प्रागल्भ्यपर्य्यन्तसहवासएव कार्य्यो ऽनेन प्रकारेणेति दर्शयितुं ज्येष्ठएव तु गृह्णीयादित्याद्युपदेश इति नानेन वचनेन वचोभङ्ग्या सवर्णानेकभ्रातृषु दायविभाग: प्रतिषिध्यत इति न कश्चिद्विरोध: ।

यत्तु नारदेनोक्तम् बिभृयादिच्छत: सर्व्वान् ज्येष्ठो भ्राता यथा पिता । भ्राता शक्त: कनिष्ठो वा शक्त्यपेक्षा कुलस्थितिरिति । तदशक्ताखिलानुजविषयम् ।

यत्तु गौतमेनोक्तं । सर्व्वं वा पूर्व्वजस्य स इतरान् बिभृयात् पितृवदिति । न चैतन्मानवेन समानार्थमिति वाच्यं, वा शब्देन प्रगल्भभ्रातृष्वनुजानां दायहरत्व-पाक्षिकत्वप्रतिपादनार्थत्वावगते: । सत्यं न मानवेन समानार्थं किन्तु प्रत्यक्षश्रुतिविरु-द्धत्वादनादर्त्तव्यम् । तथाचापस्तम्ब: । ज्येष्ठो दायाद इत्येके, तच्छास्त्रविप्रतिषिद्धम् ।

मनुः पुत्रेभ्यो दायं व्यभजदिति अविशेषेण श्रूयत इति ज्येष्ठपुत्र एव पुत्राणां मध्ये पैतृकधनभागीत्येके पुनराचार्य्या मन्यन्ते तन्मतं प्रत्यक्षश्रुतिविरुद्धं यतस्तैत्तिरीयकब्राह्मणे मनुः पुत्रेभ्यो दायं व्यभजदित्यविशेषेण श्रूयतइत्यर्थः स्वमतश्चानन्तरं तेनैवोक्तं। सर्व्वेहि धर्मयुक्ता भागिन इति। सर्व्वे पुत्रा इति शेषः। तथाच वृहस्पतिः। पितृऋक्थहरा पुत्राः सर्व्वएव समांशिन इति। ऋक्थे ऋणेच समांशिन इत्यर्थः। तथाच याज्ञवल्क्यः। विभजेरन् सुताः पित्रो रूर्द्ध्वमृक्थमृणं सममिति। ऋणमत्र पैतृकमेव विवक्षितम्। अपैतृकस्य तदेनापाकरणनियमात्। अतएव कात्यायनः। भ्रात्रा पितृव्यमातृभ्यां कुटुम्बार्थमृणं कृतम्। विभागकाले देयं तदृक्थिभिः सर्व्वमेव तिति। नारदस्तु विभागकाले पैतृकमप्यृणं देयमित्याह। यच्छिष्टं पितृदायेभ्यो दत्त्वर्णं पैतृकञ्च यत्। भ्रातृभिः स्तद्विभक्तव्य मृणी स्याद्यथा पिता। पितृदायान्नवश्राद्धानि सह दद्युरिति गौतमस्मरणात्, पितुरूर्द्धं विभागी य एकोद्दिष्टादनन्तरमिति संग्रहकारवचनाच्च। एवञ्च पैतृकधनं नवश्राद्धपैतृकर्णापाकरणार्थधनादभ्यधिकं चेन्नारदेनोक्तमेव कार्य्यं नोचेद्याज्ञवल्क्योक्तमेवेत्यवगन्तव्यम्। पतृकमपि किञ्चिदृणं विभागकाले पैतृकधनादनपाकरणीयं किन्तु विभजनीयमेवेत्याह कात्यायनः। धर्म्मार्थं प्रीतिदत्तञ्च यदृणं स्वनियोजितं, तदृश्यमानं विभजेन्न दानं पैतृकाद्धनात्। यद्धर्म्मार्थसङ्कल्पितं यच्च पित्रा प्रीतेन वाचा दत्तं, यच्च स्वेनैव पित्रा पुत्रैरपाकरणीयमिति नियोजितं, तदेतत् त्रिविधमृणं दृश्यमानं ज्ञायमानं विभजेदेवेत्यर्थः। यः पुनः पुत्रः स्वकर्त्तृकधनार्जनकर्म्मणा धनं प्राप्तुं शक्तः सन् पितृदारागतं धनं नेच्छति तस्य सन्तानत स्तदंशनिमित्तकविवादपरिहारार्थं मस्मादितरैः पुत्रैः विभाज्यधनात् किञ्चिद्दत्तं मूलधनार्थं दत्त्वावशिष्टं विभाज्यमित्याह मनुः। भ्रातॄणां यस्तु नेहेत धनं शक्तः स्वकर्म्मणा। स निर्भाज्यः स्वकादंशात् किञ्चिद्दत्त्वोपजीवनमिति। भ्रातृविशेषस्य कर्म्मभूयस्त्वात् फलभूयस्त्वमिति न्यायेन समभागादभ्यधिकेन धान्यादिना विवर्द्धनमितरै र्भ्रातृभिः कार्य्यमित्याह नारदः। कुटुम्बार्थेषु चोद्युक्त स्तत्कार्य्यं कुरुते तु यः। स भ्रातृभि र्वृहणीयो ग्रासाच्छादनवाहनैरिति।

इति स्मृतिचन्द्रिकायामजीवद्विभागे समविभागप्रकारः।

अथ विषमविभागप्रकारः।

तत्र बृहस्पतिः। पितृरिक्थहराः पुत्राः सर्व्वएव समांशिनः, विद्याकर्म्मयुतस्तेषामधिकं लब्धुमर्हति। ये पतितादिव्यतिरिक्ताः पितृरिक्थहराः पुत्रा विद्यादेरसत्तया सत्तया वा सदृशास्ते समांशिन एव स्युः, ये पुनर्विद्यादेरसत्तयाच विसदृशास्तेषां मध्ये यो विद्याद्युपेतः स एवोद्धारेण वा विषमविभागेनाधिकं धनं लब्धुमर्हतीत्यर्थः।

तत्रापि कर्म्मानुष्ठातृत्व तारतम्येन लभ्यधनपरिमाणतारतम्यं भवति न पुनर्विद्यातारतम्येनेत्याह कात्यायनः। यथा यथा विभागाच्च धनं याथार्थतामियात्। तथा तथा विधातव्यं विद्वद्भिर्भागगौरवं। द्रव्यबाहुल्ये सतीति शेषः। अतएव मनुः। उद्धारो न दशस्वस्ति सम्पन्नानां स्वकर्म्मसु यत्किञ्चिदेव देयं स्यात् ज्यायसे मानवर्द्धनमिति। ज्येष्ठादेरर्थार्थं विभाज्यद्रव्यराशेः सकाशात् योर्थ उद्ध्रियते स उद्धारः दशसु कतिपयेषु जीवनमात्रपर्य्याप्तधनेष्विति यावत् स्वकर्म्मसु स्वस्वाधिकारतोऽनुष्ठेयकर्म्मसु सम्पन्नानां कर्त्तृत्वमापन्नानामशेषभ्रातॄणां द्रव्यबाहुल्ये सत्यपि कर्म्मनिष्ठत्वसाम्यात् उद्धारो मानवर्द्धनार्थदानञ्च नास्ति किन्तु स्वल्पधनशालिषु विद्यादितोऽपि सदृशेषु जीवनमात्रपर्य्याप्तधनत्वेनानुद्धारेऽपि सम्मानार्थं ज्यायसे किञ्चिद्वस्तुमात्रं देयमित्यर्थः।

एवञ्च येषां भ्रातॄणां प्रभूतधनं विद्यते विद्यादौच तारतम्यमस्ति तेषामेव विभागे उद्धार इति मन्तव्यम्।

उद्धारप्रकारमप्याह मनुः। ज्येष्ठस्य विंश उद्धारः सर्व्वद्रव्याच्च यद्वरं। ततोऽर्द्धं मध्यमस्य स्यात्तुरीयन्तु यवीयस इति। ज्येष्ठस्याग्रजस्य विद्यादिवशादुत्तमस्य विभाज्यद्रव्यराशे विंशतितमोविभागः श्रेष्ठमेकं द्रव्यं तस्मिन्नेव राशौ चत्वारिंशत्तमो भागोमध्यममेकं द्रव्यं जन्मतो मध्यमस्य विद्यादिवशतश्च मध्यमस्य उद्धारः, तुरीयः तस्मिन्नेव राशौ अशीतितमो भागः कनिष्ठमेकं द्रव्यं जन्मना विद्यादिवशाच्च यवीयस उद्धारः स्यादित्यर्थः।

अवशिष्टस्यच राशे विंभागप्रकारमाह सएव। एवं समुद्धृतोद्धारे समानांशान् प्रकल्पयेदिति। उद्धृतावशिष्टं समं विभजेदित्यर्थः। अथवा अस्मिन्नेव विषये विषमविभागएव स्यान्नोद्धार इत्याह उद्धारेऽनुद्धृते त्वेषामियं स्यादंशकल्पना। एकाधिकं हरेज्ज्येष्ठः पुत्रोऽध्यर्द्धं ततो ऽनुजः। अंशमंशं यवीयांस इति धर्म्मो व्यवस्थितः एकाधिकमंशं द्व्यंशमिति यावत् द्व्यंशं वा पूर्व्वजः स्यादिति गौतम-

स्मरणात्। पूर्व्वजो विद्यादिना ज्येष्ठ इत्यर्थः। अतएव बृहस्पतिः। जन्मविद्यागुणज्येष्ठो द्व्यंशं दायादवाप्नुयादिति। एवञ्च न जन्मतः प्राथम्यादिमात्रमुद्धारे विषमविभागे वा कारणं किन्तु विद्यादिनिबन्धनश्रेष्ठत्वाद्युपेतं प्राथम्यादिकमिति मन्तव्यम्।

अयञ्चासमविभागप्रकारः कलियुगे तु न वर्त्तत इत्याह संग्रहकारः। यथा नियोगधर्म्मोऽथ नानुबन्ध्यावधोऽपि वा। तथोद्धारविभागोऽपि नैव सम्प्रति वर्त्तते। अद्यसम्प्रतिशब्दौ कलियुगमभिसन्धायोक्तौ। अतएव पुराणं। ऊढायाः पुनरुद्वाहं ज्येष्ठांशं गोवधं तथा। कलौ पञ्च न कुर्व्वीत भ्रातृजायां कमण्डलुमिति। ज्येष्ठांशं जन्मविद्यादिश्रेष्ठनिबन्धनांशं गोवधं अनुबन्ध्यादिकर्म्मार्थं, कमण्डलुं गृहिणः कमण्डलुधारणं। एतदेव धारेश्वरेणोक्तं ज्येष्ठस्य विंश उद्धार इत्येवमादीनि वाक्यानि न विचार्य्यन्ते लोकेनात्यन्तपरित्यक्तत्वात् कलाविति शेषः द्वापरादावनुष्ठेयत्वेनात्यन्तपरित्यागाभावात्।

यत्तु पुनर्व्विश्वरूपेणोक्तं यथा, महोचं वा महाजं वा श्रोत्रियायोपकल्पयेदित्यस्य शिष्टाचारेण बाधितत्वात् अकरणं एवमुद्धारस्यापीति, तदयुक्तं श्रुतिशिष्टाचारयोर्व्विरोधे शिष्टाचारस्यैव दुर्ब्बलस्य बाध्यत्वात्। दुर्ब्बलत्वञ्च। श्रुतिस्मृतिविहितो धर्म्मो स्तदलाभे शिष्टाचारः प्रमाणमिति वशिष्ठस्मरणादवगम्यते। किञ्च महोचादेरनुपकल्पनं शिष्टाचाराभाव एव न पुनः शिष्टाचार इति शिष्टाचारेण बाधितत्वादित्ययुक्तमुक्तं शिष्टाचाराभावादकरणमिति. श्रीकरोक्तिवद्वक्तव्यं न च तथोक्तं।

यत् पुनर्व्विज्ञानेश्वरेणोक्तं सत्यमयं विषमो विभागः शास्त्रदृष्ट स्तथापि लोकविद्विष्टत्वान्नानुष्ठेय इति, एतदपि वाङ्मात्रंनैतदुद्धारविषमविभागादौ लोकविद्वेषोऽस्ति प्रत्युत विद्यागुणपुण्यकर्म्मसम्पन्नज्येष्ठादौ भागाधिक्ये लोकानुरागो दृश्यतइति यत्किञ्चिदेतत्।

ये पुनः स्मृतिसमुच्चयकाराः शम्भुश्रीकरदेवस्वाम्यादयः सम्प्रत्युद्धारविषमविभागयोः शिष्टाचारं क्वापि मन्यमाना उद्धारादिविषयाणि स्मृतिवाक्यानि विचारयितुं ग्रन्थविस्तारं चक्रिरे तेषां धर्म्मज्ञसमयपुराणवचनाभ्यां कलौ सर्व्वत्र शिष्टाचाराभावस्य निश्चितत्वात् वृथैव प्रयासो ग्रन्थविस्तरश्च जायत इत्यस्माभिरुद्धारादिविषये दिङ्मात्रमेव प्रदर्शितं।

इति स्मृतिचन्द्रिकायां जीवद्विभागे विषमविभागप्रकारः।

अथान्यान्यपि अजीवद्विभागविषयाणि ।

तत्र वशिष्ठः। अथान्यान्यप्यजीवद्विभागविषयाणि कानिचिद्वचनानि लिख्यन्ते। अथ भ्रातृणां दायविभागो याश्चानपत्याः स्त्रियस्तासामापुत्रलाभादिति। याः पितृस्त्रियो ऽनपत्या गर्भस्थापत्यास्तासामापुत्रलाभादाप्रसवात् सहवासेन स्थितानां भ्रातृणां अनपत्यस्त्रीणाञ्च प्रसूतापत्यलिङ्गज्ञानानन्तरं दायविभागो न पुनरेवंविधविषये नवश्राद्धानन्तरं दायविभाग इत्यर्थः।

नन्वस्य वचनस्य नवश्राद्धानन्तरं भ्रातृणामनपत्यस्त्रीणाञ्च दायविभागो भवतीति ऋजुरर्थः कथं परित्यज्यते, उच्यते। स्त्रीणामापुत्रलाभादिति विरुद्धार्थावगते स्तत्परिहाराय परित्यज्यते स्त्रीणामदायानां दायविभागासम्भवाच्च परित्यज्यते, तथा चार्हति स्त्रीत्यनुवृत्तौ बौधायनश्चाह। न दायं निरिन्द्रिया ह्यदायाश्च स्त्रियो मता इति श्रुतिरिति। हि शब्दोऽत्र यस्मादर्थे। एवञ्चायमर्थः यस्मान्निरिन्द्रिया व्याध्यादिनापगतेन्द्रियाः स्त्रियश्च अदाया मता इति श्रुतिः तस्मान्न स्त्री दायं विभक्तव्यान्यद्वारागतं द्रव्यमर्हतीति। निरिन्द्रिया ह्यदायाश्च स्त्रियो मता इत्यनेन तस्मात् स्त्रियो निरिन्द्रिया अदाया इति तैत्तिरीयकश्रुतिरर्थतः प्रदर्शितेति मन्तव्यं। यद्यप्यदायाः स्त्रियः कथं तर्हि याज्ञवल्क्येनोक्तं पितुरूर्द्धं विभजतां मातापंशं समं हरेदिति। कथञ्च व्यासेन, असुतास्तु पितुः पत्न्यः समांशाः परिकीर्त्तिताः। पितामह्यश्च सर्व्वास्ता मातृतुल्याः प्रकीर्त्तिता इति। कथं विष्णुना, मातरः पुत्रभागानुसारिभागहारिण्य अनूढाश्च दुहितर इति। नहि स्त्रीणां दायानर्हत्व मात्रादीनां दुहित्रन्तानां अंशहारित्वोक्तिः प्रयुज्यते, बाढ़ं युज्यते, दायानर्हाणां हि दायहरत्वोक्तिर्विरुध्यते न पुनरंशहरत्वोक्तिः अंशो हि भागवचनो न दायवचनः, गणद्रव्यादावाप्यंशो देय इति प्रयोगदर्शनात् तेन मातादीना दायद्रव्याभावेनाविभागेऽपि विभाज्यराशौ स्वाम्यस्य पत्न्यधिकरणसिद्धस्य विद्यमानत्वात् तत्र यावदर्थमर्थग्रहणं स्वकीयस्वाम्यव्यवस्थापकं मात्रादिभिरंशतः कार्य्यमिति याज्ञवल्क्यादिभिरुक्तमिति मन्तव्यं।

नच दायशब्देन यद्धनं स्वामिसम्बन्धादेव निमित्तादन्यस्य स्वं भवति तदुच्यत इति दायादिशब्दार्थनिरूपणार्थं मिताक्षरायामुक्तं युक्तं। एवं हि पत्युः स्वं, पतिसम्बन्धादेव निमित्तात् पत्नीस्वं भवतीति तस्यापि दायत्वापत्तिः ततश्चादायाः स्त्रिय इति श्रुतिविरोधो दुर्व्वारः स्यात्।

अस्मन्मते तु विभागार्हं स्वं स्वामिसम्बन्धादेव निमित्तादन्यस्य स्वं भूतं दायशब्दार्थ इति, विभागानर्हं पत्नीस्वं न दायः तथाहि पतिदारागतं स्त्रीधनं नित्यं विभागानर्हमेव लोके दम्पत्योर्धने विभागादर्शनात् जायापत्योर्न विभागोविद्यत इति हारीतस्मरणाच्च, तेनात्र न मातुः स्वत्वव्यवस्थापको दायविभागः किन्तु यावदर्थमेवार्थहरणमिति मन्तव्यं। अतएव स्मृत्यन्तरे निर्द्धनमातृविषयमेवांशहरणं न मातृमात्रविषयमिदमिति ज्ञायते। जनन्यस्वधना पुत्रैर्विभागे ऽंशं समं हरेदिति स्मरणात्।

अस्वधना प्रातिस्विकस्त्रीधनशून्या जननी, पुत्रैरजीवद्विभागे क्रियमाणे पुत्रांशसममेवांशं हरेदित्यर्थः जननीग्रहणं तत्सपत्न्यादेरप्युपलक्षणार्थं। मातरः पुत्रभागानुसारि भागहारिण्य इति विष्णुस्मरणात् अस्वधनेति विशेषणोपादानात् स्वधनादेव स्वकीय जीवनस्य स्वानुष्ठेयस्य च धनसाध्यकर्मणः सिद्ध्यसम्भवे जनन्यादीनां सधनानामपि भागग्रहणमिति गम्यते। तथाच स्वधनमात्रात् तयोः सिद्ध्यसम्भवे जनन्यादीनां सधनानामपि न समभागहरणं किन्तु यथोपयोगं न्यूनभागस्यैव हरणमिति च गम्यते। तथाच विभाज्यराशेरतिबहुत्वे निर्द्धनानामपि जनन्यादीनां न समांशहरणं किन्तु यथास्वोपयोग समांशन्यूनस्यैवांशस्य हरणमित्यपि गम्यते। अस्वधनेति विशेषणस्योपयोगवशादंशहरणं जनन्या। न पुनर्भ्रातृवद्दायभागित्ववशादिति ज्ञापनार्थत्वात्। समंमिति विशेषणस्योपयोगवशादसमांशस्य हरणेऽप्यवैयर्थ्यं। अल्पविभाज्यराशेरधिकपूरणस्य, प्राप्तस्य निवृत्त्यर्थत्वात्। यत् पुनर्विष्णुना, दुहितॄणां पुत्रविभागानुसारिभागहारित्वमुक्तं तत्रापि जन्मना स्वत्वान्वितस्य पितृमरणेऽप्यस्वतन्त्रावशस्य विभाज्यस्यादायत्वात् अनूढेति विशेषणोपादानात् स्वविवाहार्थं पुत्रभागानुसारिभागग्रहणं न पुनर्भ्रातॄणामिव दुहितॄणां दायविभागार्थमिति गम्यते यतएवादायविभागार्थं अंशग्रहणं किन्तु विवाहसंस्कारार्थं अतएव विभाज्यधन बाहुल्याभावविषयमेतदिति वक्ष्यते।

अतएव देवलेनोक्तं। कन्याभ्यश्च पितृद्रव्यं देयं वैवाहिकं वस्विति। वैवाहिकं वसु विवाहप्रयोजकधनमित्यर्थः। अतएव संस्कार्या इत्यनुवृत्तौ याज्ञवल्क्यः। भगिन्यश्च निजादंशाद्दत्वांशन्तु तुरीयकमिति। एकस्य पुत्रस्य यावान्निजांशः तच्चतुर्थांशं प्रतिभगिनि प्रदाय भ्रातृभिर्भगिन्य संस्कार्या विवाहयितव्या इत्यर्थः। स्मृत्यन्तरेऽपि भ्रातृभ्योऽंशं चतुर्थांशं तत्र कन्या हरेद्धनमिति। भ्रातृभ्यः सकाशात् चतुर्थांशं धनं, तत्राजीवद्विभागे एकैका कन्या हरेदित्यर्थः। अनल्पविभाज्यद्रव्यविषयमेतत्। तथाच कात्यायनः। कन्यकानां त्वदत्तानां चतुर्थो भाग इष्यते

पुत्राणान्तु त्रयो भागा: साम्यं स्वल्पधने स्मृतमिति। कन्यकानां प्रत्येकमिति शेष:। एवं पुत्राणामित्यत्रापि शेषो द्रष्टव्य:। अल्पे विभाज्यधने पुत्रे भागसाम्यं त्वेकैकस्य कन्याभागस्य, विष्णादिना स्मृतमिति तुर्य्यपादार्थ:, साम्यं स्वल्पधने स्मृतमित्येत न्मातर: पुत्रभागानुसारिभागहारिण्य इत्यत्रापि द्रष्टव्यं न्यायसाम्यात्। एवञ्चानल्पे विभाज्यधने चतुर्थो भाग इति पारिशेष्यादवगम्यते। पुत्राणान्तु त्रयो भागा इत्येतत् समसंख्यक भ्रातृभगिनीविषयं। यत्र तु भगिन्यो न्यूनसंख्यका स्तत्र पुत्राणां न त्रयो भागा. किन्तु किञ्चिदभ्यधिका:।

यत् पुनर्म्मनुनोक्तं। स्वेभ्यो ऽंशेभ्यस्तु कन्याभ्य: प्रदद्यु र्भ्रातर पृथक्। स्वात् स्वादंशाच्चतुर्भागं पतिता: स्युरदित्सव इति। यद्यप्यस्मात् स्वात् स्वादिति वीप्सावन्तो भ्रातृणामंशा स्तावन्त एव चतुर्थांशा: कन्याभ्य: भ्रातृभि: प्रदेया इत्यर्थ: प्रतिभाति। तथाप्यधिकसंख्यककन्याविषयत्वात् न प्राचीनस्मृतिविरोध:। नचा-त्रैकैकस्या: स्वात् स्वात् चतुर्थांशदानं येन प्राचीनस्मृतिविरोध: स्यात्, किन्तु समुदायस्येति सुतरामविरोध:। दत्तञ्च कन्याभि: समत्वेन विभज्य ग्राह्यं। यत् पुनर्विष्णुनोक्तं, अनूढानान्तु कन्यानां स्ववित्तानुसारेण संस्कारं कुर्य्यादिति। तदेकपुत्रतया, दायविभागाभावविषयं, यद्वा भ्रातृणां सहवासविषयं। कन्या ग्रहणमसंस्कृतानां पितुरपत्यानां उपलक्षणार्थं। अतएव व्यास: असंस्कृतास्तु ये तत्र भ्रातर: पूर्व्वसंस्कृतै:। संस्कार्य्या भ्रातृभि: काले पैतृकादेव वै धनात्। संस्कार्य्या भ्रातृभि ज्येष्ठै: कन्यकाश्च यथाविधि इति। वृहस्पतिरपि। असंस्कृता भ्रातरस्तु ये स्यु स्तत्र यवीयस:, संस्कार्य्या भ्रातृभि स्तैव पैतृकादमध्यगात् धनात्। तत्राजीवत्पितृकेषु भ्रातृष्वित्यर्थ: असंस्कृता: पित्रेति शेष:। अतएव नारद:। येषां वै न कृता: पित्रा संस्कारविधय: क्रमात् कर्त्तव्या भ्रातृभि स्तेषां पैतृकादेव तद्धनात्।

पैतृकधनाभावे त्वाह सएव। अविद्यमाने पित्रर्थे स्वांशादुद्धृत्य वा पुन:। अवश्यकार्य्या: संस्कारा भ्रातृणां पूर्व्वसंस्कृतै:। संस्कारा जातकर्म्माद्या: उपनयनान्ता: विवक्षिता: अवश्यकार्य्या इत्यभिधानात् विवाहादिसंस्कारस्य तु नैष्ठिकत्वादिपक्षान्तर-दर्शनात् अवश्यकार्य्यत्वाभावात् संस्कारशब्दस्यच सङ्कोचो विवक्षित इत्यनवद्यं। कन्यकानान्तु विवाहान्ता: संस्कारा, उपनयनरहिता: पित्रर्थाभावे स्वार्थादुद्धृत्य कार्य्या विवाहस्योपनयनस्थानत्वेनावश्यकत्वात्।

विभागकालेऽन्यदपि धनं कन्यका स्वधृतालङ्कारादि लभत इत्याह शङ्ख:। विभज्यमाने दायाद्ये कन्यालङ्कारं वैवाहिकं स्त्रीधनं कन्या लभेतेति। दायाद्ये,

दायधने, भ्रातृभि र्विभज्यमाने कन्या स्वधृतमलङ्कारं वैवाहिकं तुरीयांशादि धनं स्त्रीभतश्च पित्रादिदत्तं लभेतेत्यर्थः। बौधायनोऽपि। मातुरलङ्कारं दुहितरः साम्प्रदायिकं लभेरन्नन्यद्वेति। साम्प्रदायिकं मातृपरम्परायातं, अन्यत्तदितरद्वा मातृधृतमलङ्कारं मातृके विभज्यमाने दुहितरः कुमार्य्यो भजेरन्नित्यर्थः।

इति स्मृतिचन्द्रिकायामजीवद्विभागविषयाणि।

अथ दायानधिकारिणः।

अथान्यान्यपि दायांशानर्हविषयाणि कानिचिद्वचनानि लिख्यन्ते।

तत्र देवलः। मृते पितरि न क्लीवकुष्ठ्युन्मत्तजड़ान्धकाः। पतितः पतितापत्यं लिङ्गी दायांशभागिनः। मृते पितरि क्लीवादयो दायविभागिनो न भवन्ति, लिङ्गी नैष्ठिकवानप्रस्थादिः क्षपणकपाशुपतादि श्चात्र विवक्षितः, मृते पितरीति विभागकालप्रदर्शनार्थमुक्तं तेन पितरि जीवत्यपि जीवद्विभागे क्लीवादयो दायविभागिनो न भवन्ति। अतएव जीवद्विभागे ऽप्यभागित्वमेषां व्यक्तमुक्तमापस्तम्बेन। जीवन् पुत्रेभ्यो दायं विभजेत् समं क्लीवमुन्मत्तं पतितञ्च परिहाप्येति। च शब्दः कुष्ठि-जडान्धादीनामुपलक्षणार्थः, परिहाय वर्जयित्वेत्यर्थः। मनुरप्याह। अनंशौ क्लीवपतितौ जात्यन्धवधिरौ तथा। उन्मत्तजड़मूकाश्च ये च केचिन्निरिन्द्रियाः। निरिन्द्रिया व्याध्यादिना विनष्टघ्राणादीन्द्रियाः। नारदोऽपि पितृद्विट् पतितः षण्ढो यश्च स्यादपपात्रकः। औरसा अपि नैवांशं लभेरन् क्षेत्रजाः कुतः। अपपात्रकः अपपात्रितः अपपातितस्य ऋक्थपिण्डोदकानि निवर्त्तन्ते इति शङ्ख-लिखितस्मरणात्। अपपातितस्य महापराधेन बन्धुबहिष्कृतस्येत्यर्थः। वशिष्ठोऽपि अनंशा स्त्वाश्रमान्तरगता इति। गृहस्थाश्रममुपेत्येति शेषः।

न चैवमुपकुर्व्वाणस्य ब्रह्मचारिविशेषस्याप्यंशशून्यत्वमिति वाच्यं, गृहस्था-श्रमानर्हकार्य्याश्रमान्तरस्यात्र विवक्षितत्वात्। विष्णुरपि। पतितक्लीवाचिकित्-स्यरोगविकला स्त्वभागहरा इति। विकल, इन्द्रियविकलः। अचिकित्स्यरोग इति वदन् चिकित्स्यक्लैव्यवैकल्यादिशालिनो भागार्हा इति दर्शयति। तेन

विभागकालस्थिताचिकित्स्यव्याधिशालिनामपि अभागहरत्वं न पुनः सहजव्याधिक्लैव्यादिशालिनामेवेति मन्तव्यं। कात्यायनोऽपि। अक्रमोढासुतश्चैव सगोत्राद्यस्तु जायते प्रव्रज्यावसितश्चैव न रिक्थं तेषु चार्हति। अक्रमोढासुतः वर्णक्रमजन्मक्रमातिक्रमेण परिणीतायाः सुतो यः। तथा सगोत्रात् सगोत्रस्त्रीपरिणेतुः सकाशाद्यः सुतः सगोत्रस्त्रियां जायेत, तथा प्रव्रज्यावसितः स्वीकृतचतुर्थाश्रमत्यागी यो भवेत्। तेषु अक्रमोढासुतादिषु ऋक्थं प्राप्तं नार्हति ते ऋक्थानर्हा इत्यर्थः। मनुरपि अनियुक्तासुत श्चैव पुत्रिण्याप्तश्च देवरात्। उभौ तौ नार्हतो भागं जारजातक कामजौ। अनियुक्तायां परस्त्रियां अपरिणेतुः सकाशात् उत्पन्नः सुतो जारजातकः स्वार्थेकप्रत्ययः। पुत्रिण्याप्त पुत्रवत्यां देवरादुत्पन्नः कामजः, तावुभौ भागं नार्हत इत्यर्थः।

एतदुक्तं भवति जारजातो नियोगविध्यतिक्रमेण जातश्च चेत्रिणो भागं नार्हतीति। बृहस्पतिरपि। सवर्णाजो ऽप्यगुणवान्नार्हः स्यात् पैतृके धन इति। अगुणवान् पितुर्दृष्टादृष्टकार्य्योपयोगि गुणरहितः। तथाचानन्तरमुक्तं तेनैव। उत्तमर्णाधमर्णाभ्यां पितरं त्रायते सुतः। अतस्तु विपरीतेन नास्ति तेन प्रयोजनं। तथा गवा किं क्रियते या न दोग्ध्री न गर्भिणी। कोऽर्थः पुत्रेण जातेन यो न विद्वान्न धार्म्मिकः। शास्त्रशौर्य्यार्थरहितस्तपोविज्ञानवर्जितः। आचारहीनः पुत्रस्तु मूत्रोच्चारसमः स्मृत इति। उत्तमऋणं ऋषिदेवपितृणामृणं अधमऋणं धनिकहस्ताद्गृहीतमृणं, यथा मूत्रपुरीषे स्वकीयोदरात् निर्गतेऽप्यत्यन्तहेयभूते तथैव विद्यादिरहितः सूनुरौरसोऽपि हेयभूत इति मूत्रपुरीषोच्चारसम इत्युक्तं। मनुरपि। सर्व्वएव विकर्म्मस्था नार्हन्ति भ्रातरो धनं इति। विकर्म्मस्था निषिद्धकर्म्मोपरक्ताः धनं विभाज्यधनं। एवं निरूपितनिरंशकाः सर्व्वे पोषणीयाः। तथाच याज्ञवल्क्यः। क्लीवोऽथ पतितस्तज्जः पङ्गुरुन्मत्तको जडः। अन्धोऽचिकित्स्यरोगाद्या भर्त्तव्याः स्युः निरंशकाः। तज्जः पतितोत्पन्नः। आद्यशब्देनान्येषां प्राक्प्रतिपादितानां ग्रहणं। भर्त्तव्या दायहरैरिति शेषः। ऋक्थग्राहिभिस्ते भर्त्तव्या इति विष्णुस्मरणात्।

कथं भर्त्तव्या इत्यपेक्षिते मनुः। सर्व्वेषामपि तु न्याय्यं दातुं शक्त्या मनीषिणा। ग्रासाच्छादनमत्यन्तं पतितो ह्यददद्भवेत्। अत्यन्तं यावज्जीवमित्यर्थः। कात्यायनोऽपि ग्रासाच्छादनमत्यन्तं देयं तद्बन्धुभिर्मतं। बन्धुनामप्यभावे तु पितृद्रव्यमवाप्नुयात्। अपितंर द्रविणं प्राप्ता दायनीया न बान्धवा इति। तद्बन्धुभिर्निरंशकबन्धुभि स्तत्पितृद्रव्यग्राहिभि र्ग्रासाच्छादनं देयमिति मन्वादीनां सम्मतमित्यर्थः।

अपित्रामित्यादेरयमर्थः। निरंशकपितृद्रव्यं तदन्यभिरनाप्तं राज्ञा तदन्यवी भरणाय न दापदीया इति। एतदुक्तं भवति निरंशकपित्राधनाग्राहकबान्धवाना मानावश्यकं निरंशकभरणमिति।

एवमशेषनिरंशकानां भरणे प्राप्ते कस्यचित् पर्य्युदासं कुर्व्वन्नाह देवलः। तेषां पतितवर्ज्जेभ्यो भक्तवस्त्रं प्रदीयतइति। पतितोत्पन्नोस्यापि पतितत्वात् सोऽपि वर्ज्यः। अतएव बौधायनः। अतीतव्यवहारान् ग्रासाच्छादनैर्बिभृयुः अन्धजडक्लीवव्यसनिव्याधितादींश्चाकर्म्मिणः पतितत‍ज्जातवर्ज्जमिति। अतीतव्यवहारा मूकादयः। अकर्म्मिणो धर्म्मार्थबुद्ध्यर्थकर्म्मसु अक्षमाः।

वशिष्ठस्तु। तत्रोक्तचतुर्षां भरणप्रतिषेधमाह। अनंशा स्त्वाश्रमान्तरगताः क्लीवोन्मत्तपतिताश्च, भरणं क्लीवोन्मत्तानामिति। अत्र विशेषग्रहणं विशेषप्रतिषेधार्थमिति। न्यायेन पतिताश्रमान्तरगतविषयस्य भरनस्य प्रतिषेधो गम्यते। आश्रमान्तरगतिमन्तरेण प्रव्रज्यावसितत्वाभावात् प्रव्रज्यावसितभरणस्यापि प्रतिषेधोऽवावगम्यते। एवञ्च पतितत‍ज्जाताश्रमान्तरगतप्रव्रज्यावसितवर्ज्यानां निरंशकानां भरणमावश्यकमिति मन्तव्यं।

निरंशकपुत्राणामंशग्रहणविरोधिक्लैव्याद्यभावे निरंशकपुत्रत्वेनैव पैतामहधनानर्हत्वे प्राप्ते तदपवादमाह देवलः। तत्पुत्राः पितृदायांशं लभेरन् दोषवर्जिता इति। तत्पुत्रा निरंशकपुत्रा अंशग्रहणविरोधि क्लैयादि दोषवर्जिताः, पितृदायांशं पैतामहधनांशं लभेरन्नित्यर्थः। नचेदं वचनं पतितापत्यस्यापि पैतामहधनग्राहित्वं प्रापयति तत्पुत्रा इति सामान्येनाभिधानादिति वाच्य। दोषवर्जिता इत्यनेन व्युदासत्वात्। पतितस्य पुमपत्यं पतितमेव भवति। तथाच वशिष्ठः। पतितोत्पन्नः पतितो भवतीत्याहु रन्यत्र स्त्रियाः सा हि परगामिणीति।

पतितस्य पुत्रवत् प्रतिलोमायाः स्त्रियाः पुत्रस्य पुत्रोऽपि पैतामहधनानर्हः अंशग्रहणविरोधिदोषसद्भावात्, अतएव विष्णुः। तेषामेवौरसाः पुत्रा भागहारिणो नतु पतितस्य पतनीये कृते कर्म्मणि अनन्तरोत्पन्नाः प्रतिलोमासु स्त्रीषूत्पन्नाश्चाभागिन स्तत्पुत्राः पैतामहेऽप्यर्थेइति अनन्तरोत्पन्नाः पश्चादुत्पन्नाः। आनन्तर्य्यस्यात्र विवक्षितत्वात् ते तु न भागहारिणः, एवं प्रव्रज्यावसितादिपुत्रेषु यत्र यत्रांशग्रहणविरोधिदोषसद्भाव स्तत्र तत्र पैतामहधनाभागित्वं विज्ञेयं।

चेत्रजपुत्रविषये ऽप्युक्तं याज्ञवल्क्येन। औरसाः क्षेत्रजास्त्वेषां निर्द्दोषा भागहारिण इति। तद्द्वापरादिविषयं मन्तव्यं, कलौ क्षेत्रजपुत्रनिषेधात्। सदोषा स्त्वौरसादयो भर्त्तव्या इत्येतदव्याचिकित्स्यरोगाद्या भर्त्तव्याः स्यु निरंशका इत्यनेनोक्तमितीह

नोक्तं, किन्तु पूर्व्वं यन्नोक्तं तदाह सएव। सुताश्चैषां प्रभर्त्तव्या यावद्वै भर्त्तृसात् कृताः। अपुत्रा योषितश्चैषां भर्त्तव्याः साधुवृत्तयः। निर्व्वास्या व्यभिचारिण्यः प्रतिकूलास्तथैव चेति। सुताः कन्यकाः। एषां निरंशकानां। भर्त्तव्या निरंशकपुत्रद्रव्यग्राहिभिः निरंशकभरणप्रकारेण यावज्जीवमिति। अस्यापवादो यावद्वै भर्त्तृसात् कृता इति। यावद्विवाहसंस्कृता भवन्ति तावदेवेत्यपवादभावस्यार्थः।

एषां निरंशकानां अपुत्रा योषितः परिणीताः स्त्रियः सदाचारा निरंशकपितृद्रव्यग्राहिभिरेव निरंशकभरणप्रकारेणैव भर्त्तव्या व्यभिचारिण्यो भर्त्तृप्रतिकूलाश्च गृहाद्वहिष्कार्य्याः। अत्रासाधुवृत्तयोनिर्व्वासिता न भर्त्तव्या प्रतिकूलास्तु निर्व्वासिता भर्त्तव्याः।

इति स्मृतिचन्द्रिकायामंशानर्हविषयाणि।

अथ विभाज्यनिरूपणं।

तत्र कात्यायनः। पैतामहञ्च पित्र्यञ्च यत् किञ्चित् स्वयमर्ज्जितं। दायादानां विभागेतु सर्व्वमेतद्विभज्यते। स्वयमर्ज्जितं पित्राद्यविभक्तद्रव्योपयोगेन, तदनुपयोगेन स्वयमर्जितस्याविभाज्यत्वात्। एतत् त्रिविधं धनं सर्व्वं विभज्यते यदि नास्ति पितामहादिकृतमृणादिकमिति शेषः। अस्ति चेन्न सर्व्वं अपितु ऋणादिकं दत्त्वावशिष्टं विभज्यते। तथाच सएव। ऋणं प्रीतिप्रदानन्तु दत्त्वा शेषं विभाजयेदिति। प्रीतिप्रदानं प्रीत्या दत्तं। शेषं विभाजयेदिति वदन् विभाज्यवाहुल्यविषयमेतदिति दर्शयति तदवाहुल्यविषयेतु ऋक्थवदृणमपि विभाज्यमित्यजीवद्विभागप्रकरणे दर्शितं।

विभागकाले यदृणं प्रतिदेयं तस्याकूटत्वनिश्चयार्थं बन्धुभिः सह ऋक्थग्राहिभिस्तद्विशोध्यमित्याह सएव। ऋणमेवंविधं शोध्यं विभागे बन्धुभिः सहेति।

अवञ्चनार्थं ऋक्थमपि विशोध्यमित्याह सएव। गृहोपस्करवाह्याश्च दोह्याभरणकर्म्मिणः। दृश्यमाना विभज्यन्ते कोशं गूढेऽब्रवीद्भृगुः। कर्म्मिणः कर्म्मकरा दासादयः। गूढद्रव्यवञ्चनाशङ्कायां कोशाख्यं दिव्यं भृगुरब्रवीदित्यर्थः। तथाच सएव। गूढद्रव्यविशङ्कायां प्रत्ययस्तत्र कीर्त्तित इति। प्रत्ययो दिव्यं, तदपि

कोशाख्यमेवेत्युक्तं प्राक्। वृहस्पतिरप्यत्र तदेव दिव्यं भवतीत्याह। गृहोपस्कर-वाह्यादि दोह्यालङ्कारकर्म्मिणः दृश्यमाना विभज्यन्ते गूढे कोशो विधीयतइति। नच कोशग्रहणं यथाप्राप्तदिव्योपलक्षणार्थमिति वाच्यं। शङ्काविश्वाससन्धाने विभागे रिक्थिनां सदा क्रियासमूहकर्त्तृत्वे कोशमेव प्रदापयेदिति कात्यायनीये विभागविषये विहितेऽपि कोशे पुनरिह कोशाभिधानस्य नियमार्थत्वात्। तेन वार्हस्पत्येऽपि कोशग्रहणन्तदर्थमेव।

इति स्मृतिचन्द्रिकायां विभाज्यविरूपणं।

अथाविभाज्यनिरूपणं।

तत्र व्यासः। विद्याप्राप्तं शौर्य्यधनं यच्च सौदायिकं भवेत्। विभागकाले तत्तस्य नान्वेष्टव्यं स्वरिक्थिभिः, विद्याप्राप्तशब्देनात्र न विद्यामात्रप्राप्तमुच्यते किन्तु विशेषेण प्राप्तं। तथाच कात्यायनः। परभक्तोपयोगेन विद्या प्राप्तान्यतस्तु या, तया प्राप्तं तु यद्वित्तं विद्याप्राप्तं तदुच्यते। परशब्दोऽविभक्तापेक्षया यद्यप्यन्तरं तत्र प्रयुज्यते भक्तशब्दो द्रव्यमात्रोपलक्षणकतया प्रयुक्तः। उक्तलक्षणया विद्यया धनप्राप्तिनिमित्तत्वमनेकविधमिति निमित्तभेदेन तत्प्राप्तंधनमप्यनेकविधं तत् सर्व्वमविभाज्यमिति संक्षेपतो विद्याप्राप्तशब्देनैव व्यासेनाभिहितं।

तत् शब्दार्थं प्रपञ्चयितुमाह कात्यायनः। उपन्यस्तेतु यल्लब्धं विद्यया पणपूर्व्वकं विद्याधनं तु तद्विद्यात् विभागे न नियुज्यते। शिष्यादार्त्विज्यतः प्रश्नात् सन्दिग्ध-प्रश्ननिर्णयात् स्वज्ञानशंसनाद्वादात् लब्धं प्राध्ययनाच्च यत्, विद्याधनन्तु तत् प्राहु र्व्विभागे न नियुज्यते, परं निरस्य यल्लब्धं विद्यातः पणपूर्व्वकं विद्याधनन्तु तद्विद्यात् न विभाज्यं वृहस्पतिः। विद्याप्रतिज्ञया लब्धं शिष्यादाप्तञ्च यद्भवेत्। ऋत्विङ्न्यायेन यल्लब्धमेतद्विद्याधनं भृगुः। शिल्पेष्वपि हि धर्म्मोऽयं मूल्याद्यच्चाधिकं भवेत् विद्याबलकृतञ्चैव याज्यतः शिष्यतस्तथा। एतद्विद्याधनं प्राहुः सामान्यं यदतोऽन्यथेति। उपन्यस्ते वर्ण्यत्यागादिवैचित्र्येणोपन्यस्ते, शिष्यादध्यापनादौ,

आर्त्विज्यत: आर्त्विज्यकरणात्, प्रश्नात् उपपातक्यादिकृतप्रायश्चित्तार्थप्रश्नात्। सन्दिग्धप्रश्ननिर्णयात् अर्थ्यादिकृतप्रश्नप्रतिप्रश्नयोर्निर्णयात्। स्वज्ञानशंसनात् अग्रपूजादौ स्वज्ञानख्यापनात्, वादात् जल्पवितण्डादिभेदात्, प्राध्ययनात् घटिकाध्ययनात्। विद्यातोऽन्यहृदयज्ञानादिना विद्याप्रतिज्ञया बहुविद्याख्यत्वप्रतिज्ञया, शिष्यादाप्तं गुरुपूजार्थं। ऋत्विङ्न्यायेन लब्धं उपदिष्टत्वादिना लब्धं, शिल्पेष्वपिहि शिल्पविद्योपार्जनविषयेष्वपि अयं विद्याधनाविभागरूपो धर्मोऽस्ति, मूल्यात् भृते यद्धनमधिकं भृतकाध्यापनादौ भवेत्। तथा विद्याबलकृतंविद्याधिककृतं यद्विशिष्टपूजादौ भवेत् तथा याज्यत: शिष्यत: संस्कारादौ भवेत् तदेतद्विद्याधनं प्रातिस्विकं प्राहु:। अतो विद्याधनात् अन्यथाभूतं अविभक्तपित्रादिद्रव्योपयोगेन प्राप्तं तदविभक्तानां सामान्य साधारणं विभाज्यमिति यावत्। शेषं व्यक्तार्थं।

नारदोऽपि सामान्यं विद्याधनमाह। कुटुम्बं बिभृयाद्भ्रातु र्यो विद्यामधिगच्छति, भागं विद्याधनात्तस्मात् स लभेताश्रुतोऽपि सन्। अविभक्तधनोपयोगेन प्राप्तविद्याधनस्य विभाज्यत्वदर्शनार्थमेतत्। अश्रुतोऽप्यविद्योऽपीत्यर्थ:। एवमविभक्तपित्रादिगृहीतविद्यालब्धमपि धनं विभाज्यं। तथाच कात्यायन:। कुलं विनीतविद्यानां भ्रातृणां पितृतोऽपि वा, शौर्य्यात् प्राप्तन्तु यद्वित्तं विभाज्यंतु बृहस्पति:। अविभक्तस्वकुले, पितृव्यादे: पितृतोऽपि वा शिक्षितविद्यानां, यद्वित्तं, शौर्य्यात् प्राप्तं विद्ययैव प्राप्तं तद्विद्याधनं विभाज्यं बृहस्पतिरब्रवीदित्यर्थ:।

विभाज्यविद्याधनेऽपि भागाधिक्यमर्जकस्यास्ति। येन चैषां स्वयमुपार्जितं स्यात् द्व्यंशमेव हरेदिति वशिष्ठस्मरणात्। गौतमस्त्वविभाज्यविद्याधनेष्वंशदानमर्जकेच्छया क्वचिदाह। वैद्यो वैद्येभ्य: कामं दद्यादिति। वेदेभ्योविद्यावद्भ्य:। नारदस्त्विच्छाशून्यो न दद्यादित्याह। वैद्यो वैद्याय नाकामो दद्यादंशं स्वकाद्धनात्। पितृद्रव्यं समाश्रित्य नचेत्तेन तदाहृतं। पूर्व्वार्द्धे स्वकाद्धनादिति सामान्येनोक्तं तद्विद्याधनविषयमिति उत्तरार्द्धेनावगन्तव्यं। अविद्याय सकामिकोऽपि न दद्यात् तथाच कात्यायन:, नाविद्यानान्तु वैद्येन देयं विद्याधनं क्वचित्, समविद्याधिकानान्तु देयं वैद्येन तद्धनं। अवैद्यानां न क्वचिद्देयं सकामेनापि न देयमित्यर्थ:। शौर्य्यधनन्तु तेनैव निरूपितं। आहृत्य संशयं यत्र प्रसभं कर्म्म कुर्व्वते तस्मिन् कर्म्मणि तुष्टेन प्रसाद: स्वामिना कृत:। तत्र लब्धन्तु यत् किञ्चिद्धनं शौर्य्येण तद्भवेदिति। प्रसभो बलात्कार:।

अन्यदप्यविभाज्यमाह सएव। ध्वजाहृतं भवेद्यत्तु विभाज्यं नैव तत् स्मृतमिति। ध्वजाहृतपदप्रतिपाद्यमप्युक्तं तेनैव। संग्रामादाहृतं यत्तु विद्राव्य द्विषतां बलं।

स्वाम्यर्थं जीवितं त्यक्त्वा तद्ध्वजाहृतमुच्यते। एतदपि शौर्य्यशब्देनैव व्यासेनाभिहितं तद्विशेषितत्वात् कात्यायनेनतु भेदेन ध्वजाहृतस्याभिधानं प्रपञ्चनार्थमिति मन्तव्यं।

अत्रापि विद्याप्राप्तवदविभाज्यत्वे पित्राद्यविभक्तधनानुपयोगेनार्जनं प्रयोजकमित्यवगन्तव्यं अतएव तदुपयोगेनार्जिते विषमविभागेन विभाज्यं भवतीत्याह व्यासः। साधारणं समाश्रित्य यत्किञ्चिद्वाहनायुधं। शौर्य्यादिनाप्नोति धनं भ्रातरस्तत्र भागिनः। तस्य भागद्वयं देयं शेषास्तु समभागिन इति। साधारणमविभक्तानां धनं। भ्रातृग्रहणमविभक्तोपलक्षणार्थं। तस्य साधारणधनाश्रयणादर्जकस्येत्यर्थः।

शौर्य्यादिनेति वदन्नन्यत्रापि धने कन्यागतवैवाहिकादौ साधारणं समाश्रित्य विवाहेन प्राप्ते विभाज्यत्वं दर्शयति। कन्यागतवैवाहिकयोः स्वरूपमाह कात्यायनः। यल्लब्धं दानकालेतु सजात्या कन्यया सह, कन्यागतं तु तद्वित्तं शुद्धः वृद्धिकरं स्मृतमिति। वैवाहिकन्तु तद्विद्यात् भार्य्यया यत् समागतं। धनमेवंविधं सर्व्वं विज्ञेयं धर्म्मसाधकमिति। कन्यागतं कन्यया सहागतं।

स्त्रीधनस्य सर्व्वधनस्याप्यविभाज्यत्वमाह सएव। शौर्य्यप्राप्तं विद्यया च स्त्रीधनञ्चैव यत् स्मृतं। एतत् सर्व्वं विभागेतु न विभाज्यं तु ऋक्थिभिः। वृहस्पतिरप्यविभाज्यमाह। पितामहपितृभ्यां तु दत्तं मात्रा च यद्भवेत्। तस्य तन्नापहर्त्तव्यं शौर्य्यभार्य्याधनं यथा। मातृदत्तेतु विशेषमाह नारदः मात्रा च स्वधनं दत्तं यस्मै स्यात् प्रीतिपूर्व्वकं, तस्याप्येष विधिर्दृष्टो मातापीष्टे यथा पिता। स्वधनइति शेषः। एष विधिः पितृदत्तोक्तविषयो विधिः। एवं मित्रदत्तादिकमपि न विभाज्यं तथा च याज्ञवल्क्यः। पितृद्रव्याविरोधेन यदन्यत् स्वयमर्जितं मैत्रमौद्वाहिकञ्चैव दायादानां न तद्भवेदिति। मैत्रमौद्वाहिकञ्चैव माधुपर्किकमेव चेति मनुना माधुपर्किकस्याप्यविभाज्यत्वमुक्तं। पितृद्रव्याविरोधेन तदन्यत् स्वयमर्जितमिति। अस्यार्थो मनुना स्पष्टीकृतः। अनुपघ्नन् पितृद्रव्यं श्रमेण यदुपार्जयेदिति। उभयत्रापि पितृग्रहणं अविभक्तोपलक्षणार्थं। श्रमेण श्रमजनितेन कृष्यादिनेति यावत् अनुपघ्नन्नपीडयन्। व्यासोऽपि अनाश्रित्य पितृद्रव्यं स्वशक्त्याप्नोति यद्धनं दायादेभ्यो न तद्दद्यादिति। अनाश्रित्य अर्जनसिद्ध्यर्थमिति शेषः। पितृग्रहणमविभक्तोपलक्षणार्थमत्रापि। प्रजापतिरपि। विद्याशौर्य्यश्रमेर्लब्धं स्त्रीधनं माधपर्किकं, मैत्रमौद्वाहिकं भ्रातु र्भ्रातृभिर्न विभाज्यते। श्रमः कृष्यादिः।

एवं पूर्व्वपुरुषक्रमायातं परापहृतं स्वशक्त्याभ्युद्धृतं द्रव्यं दायादेभ्यो न दद्यात्। क्रमादभ्यागतं द्रव्यं हृतमभ्युद्धरेत्तु, यः दायादेभ्यो न तद्दद्यादिति याज्ञवल्क्यस्मरणात्।

द्रव्यं भूव्यतिरिक्तं। भूद्रव्ये त्वाह शङ्खः। पूर्व्वनष्टान्तु यो भूमिमेकश्चाभ्युद्धरेत् क्रमात् यथाभागं लभन्तेऽन्ये दत्त्वांशन्तु तुरीयकं। क्रमादभ्यागतां पुत्रपौत्रादीनां मध्ये यः पूर्व्वनष्टां परापहृतां स्वशक्त्याभ्युद्धरेत् तस्मै तच्चतुर्थांशं दत्त्वा शेषमुद्धारकेण सहान्ये विभजेरन्नित्यर्थः। केचिदभ्युद्धृतं त्वमेव गृहाणेत्यन्यानुमतिमन्तरेणाभ्युद्धृतं भूम्यादि सर्व्वद्रव्यविषयमेतद्वचनं। याज्ञवल्क्यवचनन्तु अन्यानुमत्याभ्युद्धृतभूम्यादि सर्व्वविषयमिति वदन्ति, यदत्र युक्तं तद्ग्राह्यं।

परेणापहृतस्य तु भूम्यादिद्रव्यस्य उद्धारे व्यासेनोक्तं। कृतेऽकृते वा विभागे रिक्थी यत्र प्रवर्त्तते सामान्यस्येङ्गावयति तत्र भागहरस्तु सः। परापहृतं विभाज्यधनं यो रिक्थी साधयति स तत्र साधिते धने दंशः स्यादित्यर्थः। अन्यदप्यविभाज्यमाह मनुः वस्त्रं पत्रमलङ्कारं कृतान्नमुदकं स्त्रियः। योगक्षेमप्रचारञ्च न विभाज्यं प्रचक्षते। वस्त्रमविभक्तप्रावृतं, वस्त्रं यच्चाङ्गयोजितमिति कात्यायनस्मरणात्। पत्रारूढमृणं धनं पत्रनिविष्टमिति तेनैव व्यक्तमुक्तत्वात्। स्त्रियो दास्यः। उदकं खनिविशस्थ कूपवाप्याद्यम्भः। योगक्षेमशब्दौ लौकाक्षिणा व्याख्यातौ, क्षेमं पूर्त्तं योगमिष्टमित्याहुस्तत्त्वदर्शिनः। अविभाज्ये च ते प्रोक्ते इति। अथवा योगक्षेमार्थमुपासितेश्वरसकाशात् यो रिक्थानां लाभः स एवात्र योगक्षेमशब्देनोच्यते, प्रचारशब्देन गोप्रचार उच्यते। कात्यायनेन गोप्रचारश्चेति विशेषितत्वात्। अथवा प्रचारशब्देनाङ्गनादिकमुच्यते, प्रचक्षते विचारहीनाः केचन स्मृतिकारा इति शेषः। अतएव वृहस्पतिः, वस्त्रादयोऽविभाज्या ये ऽप्युक्ता स्ते न विचारितं, धनं भवेत् समृद्धानां वस्त्रालङ्कारसंश्रितं। युक्त्या विभजनीयन्तु दन्यथानर्थकं भवेदिति। यद्यपि वस्त्रादावेकस्मिन् विचारणेन विभागे क्रियमाणे वस्तुनाशः। ऋणलेख्येतु तत्प्रमाणनाश, कृतान्ने प्रभृते ऽविभज्यमाने स्वल्पाशनभोक्तृभागे तन्नाशः कूपादौतु दुष्करो विभाग इति अविभाज्यत्वमेव प्रतिभाति तथापि यथा वस्तुनाशादनवतारः तथैव युक्त्या विभजनीय अन्यथा साधारणतया अवस्थितेसति असूयया परस्परभोगप्रतिबन्धे कस्यचिदप्युपकाराभावात् अनर्थकं भवेदित्यर्थः।

युक्त्या विभजनप्रकारोऽपि तेनैव प्रपञ्चितः। विक्रीय वस्त्राभरणमृणमुद्ग्राह्य लेखितं। कृतान्नञ्चाकृतान्नेन परिवर्त्य विभज्यते। उद्धृत्य कूपवाप्यम्भः पर्य्यतेनैव गृह्यते। एकां स्त्रीं कारयेत् कर्म्म यथांशेन गृहे गृहे। बह्वः समांशतो देया दासानामप्ययं विधिः। योगक्षेमवतो लाभः समत्वेन विभज्यते। प्रचारश्च यथांशेन कर्त्तव्यो रिक्थिभिः सदेति। ऋणमुद्ग्राह्य अधमर्णसकाशादादाय यथांशेन स्वभागानुसारेणेत्यर्थः।

एवञ्च यदुक्तमुशनसा, अविभाज्यं सगोत्राणामासहस्रकुलादपि, याज्यं क्षेत्रञ्च पत्नञ्च कृतान्नमुदकं स्त्रिय इति। एतदप्यनादृत्य युक्त्या याज्यं क्षेत्रञ्च विभजनीयं, तथाहि याज्यसकाशादुत्पन्नलाभो विभजनीयः। क्षेत्रञ्चाखिलदायादानुमत्या विभजनीयं। दायादैर्नाभ्यनुज्ञातं यत्किञ्चित् स्थावरे कृतं। तत् सर्व्वमकृतं ज्ञेयंयद्येकोऽपि न मन्यत इति प्रजापतिस्मरणात्।

यत्पुन स्तेनैवोक्तं। गृहक्षेत्राणि याज्याश्च प्रसादो यश्च पैतृकः, मातृकश्च प्रसादो य स्तद्विभागो न विद्यत इति। तत्र तद्विभागनिषेधमादृत्यैव युक्त्या पूर्व्वोक्तप्रकारेण गृहादिकं विभजनीयं. तथाच कात्यायनः। दृश्यमानं विभज्येत गृहं क्षेत्रं चतुष्पदमिति गृहादेरपि विभागमाह। पितृप्रसादलब्धस्य निषेधोऽप्यस्थावरे अनादेयएव, पितृप्रसादात् सिध्यन्ति वस्त्राण्याभरणानिच, स्थावराणि न सिद्ध्यन्ति प्रसादे पैतृके सतीति वृद्धयाज्ञवल्क्यस्मरणात्।

यत्पुन स्तेनैव स्मृतं, कौले ऋक्थविभागेऽपि न कश्चित् प्रभुतामियात्, भोगएव तु कर्त्तव्यो न दानं न च विक्रय इति। कौले कुलक्रमायाते स्थावरादौ न कश्चित् पित्रादिरपि रिक्थविभागेऽपि शब्दात् विक्रयादावपि न प्रभुतामियात् तेन तत्र दायादानुमतिमन्तरेण विभागविक्रयाधानानि न कुर्य्यादिति तस्यार्थः।

इति स्मृतिचन्द्रिकायामविभाज्यनिरूपणं।

पुत्रपौत्रादि विभागकल्पना।

अथ पुत्रपौत्रादिभागकल्पनाविषयाणि कानिचिद्वचनानि लिख्यन्ते।

तत्र याज्ञवल्क्यः। प्रमीतपितृकाणान्तु पितृतो भागकल्पनेति। प्रमीता अविभक्ताः पितरो येषां भ्रातॄणां ते प्रमीतपितृकास्तेषां पितृतो भागकल्पना पितृद्वारेणैव पितृपितामहप्रपितामहद्रव्यभागकल्पना न पुनः स्वरूपेणेत्यर्थः।

पितृतो भागकल्पनायां को विशेष इत्यपेक्षिते बृहस्पतिः। तत्पुत्रा विषमसमाः पितृभागहराः स्मृता इति। तत्पुत्राः प्रमीतपितृकाणां एकैकस्य पुत्राः विषमसमाः न्यूनाधिकसंख्यकाः स्वं स्वं पैतृकं भागमेव लभन्त इत्यर्थः। एतदुक्तं भवति,

कस्यचित् प्रमीतस्य एकएव पुत्रः, कस्यचिद्द्वौ, कस्यचिद्बहव, तत्र यथैकः पितृभागहर, स्तथैव द्वावपि स्वपितृभागहरौ। बहवोऽपि स्वपितृभागमात्रहरा एवेति।

यद्यपि पितृभागमात्रहरत्वेनानेकपितृकाणां पितृतो भागकल्पना स्वस्यामनुरूपा तथापि वाचनिकत्वादनुमन्तव्या।

यदा सुतयो रविभक्तयो भ्रात्रो र्मध्ये कश्चिद्भ्राता मृतः तत्सुतस्तु पितामहा-दप्राप्तांशकः पितामहोपि नासीत् तदा कात्यायनश्चाह। अविभक्ते ऽनुजे प्रेते तत्सुतं रिक्थभागिनं कुर्व्वीत जीवनं येन लब्धं नैव पितामहात्, लभेतांशं सपित्र्यान्तु पितृव्यात् तस्य वा सुता दिति। जीवनं दायधनं, अनुजग्रहणं भ्रातुरुपलक्षणार्थं।

अस्मिन्नेव विषये यदा प्रमीतस्य सुता बहव स्तदाप्याह सएव। स एवांशस्तु सर्व्वेषां भ्रातृणां न्यायतो भवेदिति। समं स्यादश्रुतत्वादिति न्यायेन मिथः समभागतया भवेदित्यर्थः।

यदपरं सएवाह। लभेत तत्सुतो वापि निवृत्तिः परतो भवेदिति। तस्यायमर्थः तस्य विभाज्यधनस्वामिपौत्रस्य सुतोऽपि वा स्वपितुरभावे तद्भागं, लभेत अथ तस्याप्यभावः किन्तु तत्सुतादेरेव विद्यमानता तदातु मृतभ्रातृसन्ततौ वृद्धप्रपिता-महधनभाग ग्रहणनिवृत्तिरिति।

ननु प्रपौत्रस्यापि प्रपितामहधनभागग्रहणमपि कथं संघटते जन्मनापि पितृपितामहयोरेव धने पुत्रपौत्रयोरेव स्वत्वसिद्धिनियमात्, सत्यं तथापि यथा पुत्रादे र्मातृधने पिण्डं दत्त्वैव मातुरूर्द्ध्वं स्वत्वसिद्धि र्भवतीति वक्ष्यते तथा प्रपितामहधने प्रपौत्रस्यापि स्वत्वसिद्धिरिति युक्तमुक्तं लभेत तत्सुतो वापीति। एवञ्च यो यस्य धनस्वामिनः प्रमीतस्य पितृत्वेन पितामहत्वेन प्रपितामहत्वेन वा पिण्डदाता तस्य तद्धनभागित्वं धनस्वामिनः सन्तत्यन्तरशालित्वेऽपि विद्यत इत्यवगन्तव्यं। अतएव देवलः समिच्छन्ति पिण्डानां दायार्थस्य विभाजनमिति। आचतुर्था द्दायादार्थस्य विभागः पिण्डदातृत्वं च मन्वादय इच्छन्तीत्यर्थः। तथाच सएव, अविभक्तविभक्तानां कुल्यानां वसतां सह। भूयोदायविभागः स्यादाचतुर्थादिति स्थितिः। तावत् कुल्याः सपिण्डाः स्युः पिण्डभेदस्ततः परमिति। अविभक्तविभक्तानां अविभक्तधनानां विभिन्नसन्ततिजातानां कूटस्थकुल्यानां भूयश्चिरं सहवसतां आचतुर्थात् कूटस्थप्रपौत्रपर्य्यन्तदायधनविभागः स्यादित्यनेकसन्ततिकदायविभाग-मर्य्यादेयमित्यर्थः। जीवत्पितृकस्य पुनः पित्रा सह कथं पैतामहधनविभाग इत्यपेक्षिते कात्यायनः। पैतामहं समानं स्यात् पितुः पुत्रस्य चोभयोरिति। व्यासोऽपि, द्रव्ये पितामहोपात्ते जङ्गमे स्थावरेऽपिवा, समसंशित्वमाख्यातं पितुः

पुत्रस्य चैवहि। याज्ञवल्क्योऽपि, भूर्या पितामहोपात्ता निबन्धो द्रव्यमेव वा तत्र स्यात् सदृशं स्वाम्यं पितुः पुत्रस्य चोभयोः। निबन्धः क्रमुकतया याचकादिभिः पर्णादिषु गृह्यमाणोंऽशः। सदृशं स्वाम्यं स्यादित्यनया वचोभङ्ग्या समानांशित्वमेवोक्तमिति मन्तव्यं। अन्यथा पूर्व्वोक्तवचनसमानार्थता स्वरसत उक्ता न स्यात्। एवञ्च जीवद्विभागेऽपि पितामहादिधनविषये विषमविभागो न कदाचिदपीति मन्तव्यं।

स्वार्जितधनविषये तु विषमविभागोऽपि युगान्तरे कदाचिदस्तीति जीवद्विभागप्रकरणेऽभिहितं।

केचित्तु यथाश्रुतार्थतामेवास्य वचनस्याङ्गीकुर्व्वते तथाच पौत्रमात्रेच्छयापि पितामहधनविभागोऽपि भवति पितुरिच्छामात्रेन च क्रमायातदानादिकं न भवति तत्र पौत्रस्यापि स्वाम्यसाम्याभिधानादित्याहुः। तदपि ग्राह्यं समञ्जसत्वात्।

अर्थे पैतामहेऽपि पितापुत्रयो स्तुल्यं स्वाम्यमिति विष्णुनाप्युक्तत्वात्। अत्रार्थादतुल्यस्वाम्यं पितापुत्रयोः पितृधनमिति गम्यते। ननु पैतामहे पैतृकेच जन्मनैव स्वाम्यमिति क्वाव तुल्यातुल्यता, उच्यते। पैतामहे धनेऽपि पितापुत्रयोः स्वाम्यं स्वातन्त्र्यमेव तुल्यता, पैतृकेतु जीवति पितरि निर्द्दोषे तस्यैव स्वातन्त्र्यमित्यतुल्यता अनेनैव भेदेन स्वाम्ये तुल्यातुल्योक्तिः।

यत्तु कात्यायनेनोक्तं। स्वयञ्चोपार्जितं पित्रा न पुत्रः स्वाम्यमर्हतीति। तत् पुत्रमात्रेच्छया पैतृके धने विभागानर्हतां वचोभङ्ग्या वक्ति, न पुन र्यथाश्रुतार्थपरमित्यनवद्यं।

व्यासेन तु सुस्पष्टमेवोक्तं। पैतृके न विभागार्हाः पुत्राः पितुरनिच्छत इति। यत्पुन र्बृहस्पतिनोक्तं। पैतामहं हृतं पित्रा स्वशक्त्या यदुपार्जितं। विद्याशौर्य्यादिनावाप्तं तत्र स्वाम्यं पितुः स्मृतमिति। तत्रापि स्वाम्यमिति वचो भङ्ग्या पितुः स्वातन्त्र्यमुक्तमिति मन्तव्यं।

स्वातन्त्र्याभिधानस्य, प्रयोजनमप्याह सएव। प्रदानं स्वेच्छया कुर्य्यात् भोगं कुर्य्यात्ततो धनात्। तदभावे तु तनयाः समांशाः परिकीर्त्तिता इति। सुतानुमतिमन्तरेणापि पितुः स्वातन्त्र्यबलात् दानादिकं जीवद्विभागोक्तविषयविशेषे विषमविभागकल्पनञ्च युज्यतइति तात्पर्य्यार्थः। स्वार्जितप्रायं यत्क्रमायातं तच्च स्वार्जितपितृधनं तद्विभागे पुत्रैर्बलात्कारो न कार्य्य इति वचोभङ्ग्याह कात्यायनः। स्वशक्त्यापहृतं नष्टं स्वयमाप्तञ्च यद्भवेत्। एतत् सर्व्वं पिता पुत्रै

विभागे नैव दाप्यते। यत्परैरपहृतं क्रमायातं स्वशक्त्या उद्धृतं यच्च नष्टं वा क्रमायातं, स्वेनैव लब्धं यच्च शौर्य्यादिना स्वयमर्जितं एतत्सर्व्वं पिता, विभागे पुत्रे न दाप्य इत्यन्वयः।

इति स्मृतिचन्द्रिकायां पुत्रपौत्रादि विभागकल्पनाविषयाणि।

स्त्रीधनविभागः।

अथ स्त्रीधनविभाग विषयाणि।

तत्रादौ तावत् स्त्रीधनभेदानाह मनुः। अध्यग्न्यध्यावाहनिकं दत्तञ्च प्रीतिपूर्व्वकं भ्रातृमातृपितृप्राप्तं षड्विधं स्त्रीधनं स्मृतं। अत्र पूर्व्वार्द्धस्यार्थः कात्यायनेन विवृतः। विवाहकाले यत् स्त्रीभ्यो दीयते ह्यग्निसन्निधौ। तदध्यग्निकृतं सद्भिः स्त्रीधनं परिकीर्त्तितं। यत्पुनर्लभते नारी नीयमाना पितुर्गृहात्। अध्यावाहनिकञ्चैव स्त्रीधनं तदुदाहृतं। प्रीत्या दत्तञ्च यत्किञ्चित् श्वश्र्वा वा श्वशुरेण वा, पादवन्दनिकञ्चैव प्रीतिदत्तन्तदुच्यते। पादवन्दनिकं पादवन्दनाद्यवसरे दत्तं। भ्रातृमातृपितृप्राप्तं यदा कदा वा जीवनार्थमिति शेष षड्विधग्रहणमुत्तरार्द्धोक्तमेकमेव स्त्रीधनमिति भ्रमापनुत्त्यर्थं कृतं न पुनरवधारणार्थं। अतएव पितृमातृपतिभ्रातृदत्तमध्यग्न्युपागतं। आधिवेदनिकाद्यञ्चेति याज्ञवल्क्येनाद्यग्रहणं कृतं। विष्णुनातु षड्विधाधिकमुक्तं। पितृमातृसुतभ्रातृदत्तमध्यग्न्युपागतं। आधिवेदनिकं बन्धुदत्तं शुल्कान्वाधेयकमिति स्त्रीधनमिति। आधिवेदनिकं अधिवेदननिमित्तं। बन्धुदत्तमित्यत्र बन्धशब्दः पूर्व्वोक्तपित्रादिव्यतिरिक्तबन्धुषु गोवलीवर्द्दन्यायात् वर्त्तते।

शुल्कान्वाधेययोः स्वरूपं कात्यायनेनोक्तं। गृहोपस्करवाह्यानां दोह्याभरणकर्म्मणां मूल्यं लब्धं तु यत्किञ्चित् शुल्कं तत् परिकीर्त्तितं। विवाहात् परतो यत्तु लब्धं भर्त्तृकुलात् स्त्रिया। भर्त्तुः पित्रोः सकाशाद्वा ह्यन्वाधेयन्तु तद्भृगुरिति। मूल्यं गृहोपस्करादीनां मूल्यं, लब्धं कन्याधनत्वेन, वरादि-

सकाशात् कन्यार्पणोपाधितयेति शेषः। पितृमात्रादिभिर्जीवनार्थं स्त्रियै दाने विशेषमाह सएव। पितृमातृपतिभ्रातृज्ञातिभिः स्त्रीधनं स्त्रियै। यथाशक्ति द्विसाहस्रं दातव्यं स्थावरादृते इति। यथाशक्ति स्थावरव्यतिरिक्तं द्विसाहस्रं द्विसाहस्रकार्षापणपर्य्यन्तं दातव्यमित्यर्थः। व्यासोऽपि द्विसाहस्रपरो दायः स्त्रियै देयो धनस्य चेति, दीयतइति दायः, परः परमः, एतच्च द्विसाहस्रकार्षापणाधिकमूल्यो धनस्य भागो जीवनार्थं न समृद्धानामपि देयइत्यवगम्यते। स्त्रियै देयइत्यत्र प्रत्यब्दमिति विधेयमध्याहार्य्यमेतद्बलादवगम्यते, ततश्च प्रत्यब्दमसकृदर्पणनियमोऽयं। अनेनाब्देषूपजीवनार्थं सकृदेव दानेतु नायमवधिनियमो नापि स्थावरपर्य्युदासः।

यत्तु उत्सवादावेव धार्य्यमित्येवमाद्युपाधिना अलङ्कारादि दत्तं, यच्च दायादादिवञ्चनार्थं दत्तं तत् स्त्रीधनं न भवतीत्याह कात्यायनः। यच्च सोपाधिकं दत्तं यच्च योगवशेन वा पित्रा भ्रात्राथवा पत्या न तत् स्त्रीधनमिष्यते। योगवशेन वञ्चनाद्युपाधितयेत्यर्थः।

ननूपाधिवञ्चनयोरभावेऽपि पित्रादिना दत्तं न तत् स्त्रीधनं भवितुमर्हति। भार्य्या पुत्रश्च दासश्च निर्द्धनाः सर्व्वएव ते। यत्ते समधिगच्छन्ति यस्यैते तस्य तद्धनमिति स्मरणात्, मैवं पुत्रादिसाहचर्य्यात् नानेन परमार्थतो निर्द्धनत्वं भार्य्याया गम्यते।किन्तु धनव्ययादावस्वातन्त्र्यमात्रं। तेन यस्यैते तस्यानुज्ञया स्वधनस्यापि विनियोगं कुर्य्युरिति स्मृतिवाक्यस्य तात्पर्य्यमवसेयम्। अतएवक्तं मनुना न निर्हारं स्त्रियः कुर्य्युः कुटुम्बाद्बहुमध्यगात्। स्वकादपि च वित्ताद्वा स्वस्य भर्त्तुरनाज्ञया। स्वतन्त्रानुज्ञया परतन्त्राः स्त्रियः स्त्रीपुंससाधारणवित्तात् आत्मीयवित्ताद्वा त्यागभोगादिकं न कुर्य्युरित्यर्थः।

अथवा निर्द्धनत्वाभिधायकस्मृतिवाक्यस्य शिल्पादिप्राप्तधनविषयत्वं ज्ञेयं। यदाह कात्यायनः प्राप्तं शिल्पैस्तु यद्वित्तं प्रीत्या चैव यदन्यतः। भर्त्तुः स्वाम्यं तदा तत्र शेषन्तु स्त्रीधनं स्मृतं। अन्यतः सख्यादितः प्राप्तस्य स्त्रीधनत्वेन विशेषकारित्वात्।

इति स्मृतिचन्द्रिकायां स्त्रीधनभेदाः।

अथ स्त्रीधनकृत्यं ।

तत्र व्यासः। यच्च भर्त्ता धनं दत्तं सा यथाकाममाप्नुयादिति। च शब्दात् सौदायिकञ्च। यथाकाममिति वदन् भर्त्तृदायादौ स्वातन्त्र्यं दर्शयति। कात्यायनोऽपि। सौदायिकं धनं प्राप्य स्त्रीणां स्वातन्त्र्यमिष्यते। यस्मात्तदानृशंसार्थं तैर्दत्तमुपजीवनं। सौदायिके सदा स्त्रीणां स्वातन्त्र्यं परिकीर्त्तितं विक्रये चैव दानेच यथेष्टं स्थावरेष्वपि। भर्तृदायं मृते पत्यौ विन्यसेत् स्त्री यथेष्टतः विद्यमानेतु संरचेत् चपयेत्तत्कुलेऽन्यथा इति। द्वितीयश्लोकेन सौदायिकाख्यस्त्रीधने पत्यौ विद्यमानेऽपि स्वातन्त्र्यमुक्तं सदेत्यभिधानात्। भर्त्तृदायो भर्त्तृदत्तं। तन्मध्येतु तदनन्तरोक्तपादत्रयेनाविद्यमाने पत्यौ स्वातन्त्र्यमुक्तं, विद्यमानेतु संरचेदित्यभिधानात्। संरचेत् भर्त्तृदत्तं भर्त्राज्ञया विना न विन्यसेदित्यर्थः।

सौदायिकञ्च तेनैव निरूपितं। ऊढया कन्यया वापि पत्युः पितृगृहेऽपि वा। भ्रातुः सकाशात् पित्रोर्व्वा लब्धं सौदायिकं स्मृतं। लब्धं धनमिति शेषः। तथाच व्यासः। यत् कन्ययाविवाहेच विवाहात् परतश्च यत्। पितृभर्त्तृगृहात् प्राप्तं धनं सौदायिकं स्मृतं। एतद्वचनद्वयेनैतदुक्तं। वाग्दानप्रभृतिपतिगृहप्रवेशायेवोत्सवसमाप्तिपर्य्यन्तं पितृगृहे पतिगृहे वा पितृपक्षत एव स्त्रिया लब्धं यौतकादि धनं सौदायिकशब्दाभिधेयमिति। ननु सौदायिकन्तु यद्देयं सुदायी भरणञ्च तदिति निघण्टुपाठात् कथं सौदायिकशब्दोऽत्र प्रयुक्तः। स्वार्थे तद्धितान्ततयेत्यनवद्यं।

भर्त्तृदायेतु, मृते भर्त्तरि न स्थावरे स्वातन्त्र्यं। तथाच नारदः। भर्त्रा प्रीतेन यद्दत्तं स्त्रियै तस्मिन् मृतेऽपि तत्, सा, यथाकाममश्नीया द्द्याद्वा स्थावरादृते इति। भर्त्तरि मृतेऽपि न तत्स्थावरे स्वातन्त्र्यमित्यर्थः। यथाकाममित्यनेन स्वातन्त्र्यमुक्तं। एवञ्च सौदायिके स्थावरेतरपतिदत्ते च स्त्रीणां स्वातन्त्र्यं अन्यत्र स्त्रीधनेऽप्यस्वातन्त्र्यमिति मन्तव्यं।

पुरुषाणान्तु भर्त्रादीनां स्त्रीधने सर्व्वत्रास्वातन्त्र्यमेव, यथाह। कात्यायनः। न भर्त्ता नैव च सुतो न पिता भ्रातरो नच। आदाने वा विसर्गे वा स्त्रीधने प्रभविष्णवः। स्वामित्वाभावादित्यभिप्रायः। अतएवानन्तरमुक्तं तेनेव। यदि ह्येकतरो ह्येषां स्त्रीधनं भक्षयेद्बलात् सवृद्धिकं स दाप्यः स्यात् दण्डञ्चैव समाप्नुयात्। तदेव यद्यनुज्ञाप्य भक्षयेत् प्रीतिपूर्व्वकं मूलमेव प्रदाप्यः स्याद्यद्यसौ धनवान् भवेत्।

धनवान् यदि भवेदित्यभिधानात् मूलमात्रमपि निर्धनी न दाप्य इत्यर्थात् गम्यते। अनुज्ञाप्य भक्षणेऽपि मूलधनाभिधानात् भर्त्रादीनामस्वामित्वमवगम्यते न पुनः पारतन्त्र्यमात्रं। एवञ्च विवाहेन भार्य्याया भर्त्तृधने नित्यपरतन्त्रस्वामित्वं सम्पद्यते न पुन भर्त्तु र्भार्य्याधने तादृशमपीत्यवगन्तव्यं। अतएव भर्त्तुः स्त्रीधनभोगेऽप्यनर्हतामाह देवलः। वृत्तिराभरणं शुल्कं लाभश्च स्त्रीधनं भवेत्। भोक्तृ तत् स्वयमेवेदं पति र्नार्हत्यनापदि। वृथा मोक्षेच भोगेच स्त्रियै दद्यात् सवृद्धिकमिति। वृत्तिर्वर्त्तनार्थं पित्रादिना दत्तं। लभ्यतइति लाभः। एतदुक्तं भवति पार्व्वत्यादिप्रीत्यर्थं व्रतादौ यत् स्त्रिया लभ्यते तदपि स्त्रीधनमिति। स्वयमेवेत्येवकारः स्वापत्यानां व्युदासार्थः। पत्युर्व्युदासस्य पतिर्नार्हतीत्यनेन सिद्धत्वात्। पत्युर्व्युदासेन ततो बहिरङ्ग भ्रात्रादिव्युदासस्यच दण्डापूपन्यायसिद्धत्वात्। वृथा आपदं विनेत्यर्थः। मोक्षस्त्यागः। स्त्रियाननुज्ञातबलात्काररहितत्यागभोगविषयमेतत्; सवृद्धिकप्रदानस्य दण्डसहितस्यानभिधानात्। पति र्नार्हत्यनापदीति वदन् आपदितु पतिरेवार्हति स्त्रीधनं भोक्तुं नान्य इति दर्शयति। अतएव पुत्रार्त्तिहरणेवापि स्त्रीधनं भोक्तुमर्हतीत्यनन्तरवचने भोक्तुमर्हतीत्यत्र पतिरिति शेषो द्रष्टव्यः। पुत्रग्रहणं कुटुम्बोपलक्षणार्थं। आर्त्ति र्धनालाभनिमित्ततो दुरपनोदात्र विवक्षिता। तस्या हरणे परिहरणे, वाशब्दादन्यत्रापि धनालाभनिमित्ततो दुष्परिहारमहासङ्कटे स्त्रीधनमननुज्ञातमपि पति र्भोक्तुं वार्हतीत्युक्तं। ननु परधनत्यागे भोगेच परस्य स्वाम्यनुज्ञया विना कथमर्हता, उच्यते। स्वाम्यनुज्ञाभावेऽपि पूर्व्वोक्तविषये, स्वाधीनजनस्वामिकेषु स्त्रीधने यथेष्टविनियोगार्हण्यापदपनोदकत्यागभोगादावर्हतास्तीत्यस्मादेव वचनात् कल्प्यतइत्यदोषः। अत्र याज्ञवल्क्यः। दुर्भिक्षे धर्म्मकार्य्येवा व्याधौ सम्प्रतिरोधके गृहीतं स्त्रीधनं भर्त्ता न स्त्रियै दातुमर्हति। धर्म्मकार्य्ये नित्ये नैमित्तिके वा, काम्येऽपि क्वचित् शान्तिके ग्रहयज्ञादौ, संप्रतिरोधके धनदानं विना निवारयितुमशक्ये धनिकाद्यासेधादौ, गृहीतं स्त्रीधनं गत्यन्तराभावेनेति शेषः। सति सम्भवे प्रतिदानस्यावावश्यकत्वात्। अतएव प्रतिदानस्य क्वचिदेवानावश्यकत्वमुक्तं कात्यायनेन, व्याधितं व्यसनस्थञ्च धनिकै रुपपीडितं। ज्ञात्वा विसृष्टं यत् प्रीत्या दद्यात्स्वेच्छया तु सः। ज्ञात्वा स्त्रियेति शेषः। विसृष्टं अनुज्ञातं। यद्यपीदं वचनं, न भर्त्ता नैवच सुत इत्यादिवचनानन्तर्य्यतो भर्त्रादिविषयमिति प्रतिभाति, तथापि अथचेत् स द्विभार्य्यः स्यान्नच तां भजते पुनः प्रीत्या निसृष्टमपि चेत् प्रतिदाप्यः स तद्भवात्। ग्रासाच्छादनवासानामुच्छेदो यत्र योषितः तत्र स्वमाददीत स्त्रीत्युपरितनवचनपर्य्यालोचनया भर्त्रैकविषयमिति मन्तव्यं।

या पुनरतिदुष्टा स्त्री सा स्वधनमनिसृष्टमपि विनियोक्तुं नार्हतीत्याह सएव। अपकारक्रियायुक्ता निर्लज्जा चार्थनाशिका व्यभिचाररता याच स्त्रीधनं नच सार्हति। स्वेच्छया विनियोक्तुमिति शेषः। भर्त्रा प्रतिश्रुतं त्वगृहीतमपि देयं, भर्त्रा प्रतिश्रुतं देयमृणवत् स्त्रीधनं सुतैरिति तेनैवोक्तत्वात्। सुतग्रहणं, पौत्रस्याप्युपलक्षणार्थं ऋणवदित्यभिधानात्। अनेनापि स्त्रीधने सुतादीनां नास्ति स्वाम्यमिति गम्यते। ततश्च स्त्रीधने जीवद्विभागे भागी नास्त्येव स्त्र्येकस्वामिकत्वात्। अतएव मनुः। जीवन्तीनान्तु तासां ये तद्धरेयुः स्वबान्धवाः. तान् शिष्याच्चौरदण्डेन धार्म्मिकः पृथिवीपतिः। पत्यौ जीवति यः स्त्रीभिरलङ्कारो धृतो भवेत्। न तं भजेरन् दायादा भजमानाः पतन्ति तद्इति। धृतः सातत्येनेति शेषः सातत्येन धृतो योगोपाधिराहित्येन स्त्रीधनत्वनिश्चयो भवति। पूर्व्वार्द्धस्य निश्चितमिश्रितस्त्रीधन-कथनार्थत्वात्। सातत्येनेति विशेषेण भाव्यमिति गम्यते। दायादा दुहित्रादयः।

इति स्मृतिचन्द्रिकायां स्त्रीधनकृत्यं।

अथ स्त्रीद्वारागतधनविभागः।

तत्र तावद्धनागमनप्रकारमाह मनुः। अन्वाधेयञ्च यद्दत्तं पत्या प्रीतेन चैव यत्। पत्यौ जीवति वृत्तायाः प्रजायास्तद्धनं भवेत्। अन्वाधेयं, विवाहादूर्द्ध्वं स्त्रिया भर्त्तृकुलात् पितृकुलाच्च लब्धं। विवाहात् परतो यत्तु लब्धं भर्त्तृकुलात् स्त्रियाः अन्वाधेयन्तु तद्द्रव्यं लब्धं पितृकुलात्तथेति कात्यायनस्मरणात्। विवाहात् परत इत्यनेनान्वाधेयपदस्यानुशब्दार्थो विवृतः। लब्धमित्यनेन तत्र त्वाधेयशब्दार्थोऽभिहित इति मन्तव्यं। यदन्वाधेयं, यच्च प्रीतेन पत्यैव दत्तं, तद्द्विविधं स्त्रीधनं धनस्वामिन्यां मृतायां अनन्तरक्षणवर्त्तिन्याः स्त्रीपुंसप्रजायाः स्वं भवेदित्यर्थः।

एतदुक्तं भवति, सप्रजःस्त्रीधनं स्वामिमरणानन्तरक्षणजीवनशालित्वेऽपि न पत्युर्भवति, किन्तु तत्कालिन्याः प्रजाया इति।

एवञ्चास्मादिदमवगम्यते, धनस्वामिन ऊर्द्ध्वं धनागमे धनस्वामिमरणानन्तर-क्षणजीवनक्रियैव धनग्रहणादिकारणतया धर्म्मशास्त्रप्रतिपादितधनस्य स्वत्वापत्ति-

कारणमिति। तेन यत्र यत्र धनस्वामिन ऊर्द्ध्वमेव धनागमनं अपुत्रस्वर्य्यातधनागमादौ तत्र तत्र ऋक्थग्राहिण: स्वत्वापत्तौ इदमेव कारणं कल्प्यं। प्रजाया इति सामान्येनाभिधानात् तत्र स्त्रीपुंसप्रजाया उक्तद्विविधऋक्थग्रहणाधिकार: समसमये जायते इति स्वत्वापत्तिरपि तदैव न पुनः पूर्व्वं भगिनीनां तदभावे भ्रातृणाञ्च भवतीति मन्तव्यं। विभागोऽत्र भ्रातृभगिनीकर्त्तृको विज्ञेय:।

एवञ्च यदुक्तं तेनैव। जनन्यां संस्थितायान्तु समं सर्व्वे सहोदरा:, भजेरन् मातृकं ऋक्थं भगिन्यश्च सनाभय इति, तत् स्त्रीक्तान्वाधेयादि द्विविधऋक्थविषयमिति मन्तव्यं।

अस्मिन्नेव विषये विशेषमाह वृहस्पति:। स्त्रीधनं स्यादपत्यानां दुहिताच तदंशिनी। अप्रत्ता चेत्, समूढ़ातु लभते मानमात्रकं। अपत्यानां, पुमपत्यानां वचनद्वयेपीतरेतरयोगे, च शब्द: तेनात्रेतरेतरयुक्तानां विभागकर्त्तृत्वं विज्ञेयं। अतएव कात्यायन: भगिन्यो बान्धवै: सार्द्धं विभजेरन् सभर्त्तृका इति। बान्धवै: सहोदरै भ्रातृभिरित्यर्थ:। सभर्त्तृका इति विशेषणं विधवानिवृत्त्यर्थं, नपुन: कन्यानिवृत्त्यर्थं, पूर्व्वोक्तवचनविरोधात्।

सहोदरभ्रातृभि: सार्द्धं ते भागहरा भगिन्यो यास्ता: प्रत्याह मनु:। यास्तास्युर्दुहितरस्तासामपि यथार्हत: मातामह्या धनात् किञ्चित् प्रदेयं प्रीतिपूर्व्वकमिति। यथार्हत: शीलोपयोगदारिद्र्याद्यपेक्षयेत्यर्थ:।

ननु दुहितृदुहितृणां भ्रातृभगिनीसद्भावे मातामहीधने स्वामित्वाभावात् किमिति किञ्चित् प्रदीयते, उच्यते। यथा पैतृके धने कन्यानां दायार्हत्वाभावेऽपि वचनबलात् ताभ्यस्तुरीयांशो भ्रातृभि र्दीयते तथात्र स्वामित्वाभावेऽपि भ्रातृभगिनीभिर्वचनबलात् किञ्चिद्दीयते। इयांस्तु भेद:। तत्र दायानर्हत्वेऽपि जन्मना स्वाम्यमस्तीत्यभिसन्धाय, पतिता: स्युरदित्सव इति दोषकीर्त्तनादवश्यं दातव्यं इह तु स्वामित्वमपि नास्तीत्यभिसन्धाय, प्रीतिपूर्व्वकमिति वचनात् प्रीतौ सत्यां देयमसत्यामदेयमिति।

अन्यत् किञ्चित् मातृवं ऋक्थं अप्रत्तानामेव न पुन: सर्व्वासां सहोदरप्रजानां भवतीत्याह सएव। मातुस्तु यौतकं यत् स्यात् कुमारीभाग एव स इति। यौतकं समानोपवेशनप्रत्यासन्नयो र्वधूवरयो र्विवाहादौ येन केनचित् समर्पितं धनं तद्वधूवरयो र्देयं युतयो यौतकं मतमिति निघण्टुकारैरुक्तत्वात् अन्योन्यार्पितयोर्वधूवरयोर्यद्देयं तद्धनं युतयोरिति यौतकमिति व्युत्पत्त्या यौतकधनमित्यर्थ:। देवस्वामीतु पितृगृहाल्लब्धं भर्त्तृगृहाल्लब्धापेक्षया पृथग्धनतया यौतकं मातृधनमित्याह।

तच्चिन्त्यं, पक्षद्वयस्यापि कल्पनामात्रत्वात्। कुमारीणामनेकत्वे समं स्यादश्रुतत्वादिति न्यायेन यौतकविभागः कार्य्यः भागविशेषाश्रुतेः।

एवमुक्तत्रिविधातिरिक्तं मातृकं ऋक्थं कुमारीणामप्यप्रतिष्ठितानामेव न पुनः सर्व्वासां दुहितॄणामित्याह गौतमः। स्त्रीधनं दुहितॄणामप्रत्तानामप्रतिष्ठितानाञ्चेति। अध्यग्न्यध्यावाहनादि स्त्रीधनं कुमारीणामप्रतिष्ठितानाञ्च दुहितॄणां स्वं भवतीत्यर्थः। ततश्च तद्धनं ता एव दुहितरो विभजेरन्नित्यभिप्रायः। अप्रतिष्ठिता अनपत्या, निर्द्धना, दुर्भगा विधवा वा एवमपरार्कानुसारात् गौतमवचनं व्याख्यातं। अस्य विज्ञानेश्वरकृता व्याख्या हेया स्वबुद्धिमात्रेणाध्याहारादिकरणात्।

अस्मिन्नेव विषये विशेषमाह याज्ञवल्क्यः। मातुर्दुहितरः शेषमृणादिति मातृकृतर्णापाकरणावशिष्टं मातृऋक्थं मातुरूर्द्ध्वमप्रत्ता अप्रतिष्ठिता दुहितरो विभजेरन्नित्यर्थः। एवम्भूतदुहित्रभावेऽप्याह स एव। ताभ्य ऋतेऽन्वय इति। एतदेव नारदः स्पष्टयति। अभावे दुहितॄणान्तु तद्वर्गान्वय एव चेति। अप्रत्तदुहितृष्वन्वयासम्भवात् प्रत्तदुहित्रन्वय इति पारिशेष्याद्गम्यते। स्त्रीगामिधनत्वात् स्त्रीरूपान्वय इति गम्यते। प्रत्तदुहितॄणां दुहितॄणां, स्त्रीरूपान्वयाभावे दौहित्राणां यथा स्यादिति सामान्येन तदन्वय इत्युक्तं। दौहित्राणामप्यभावे तु विभजेरन् सुताः पित्रोरूर्द्ध्वं ऋक्थमृणं सममिति, याज्ञवल्क्यस्मरणात् मातुरूर्द्ध्वं मातृरिक्थं मातृकृतं चर्णं समं सुता विभजेरन्नित्यवगमात् सुतानां मातृऋणधनविभक्तृत्वं। अन्यथा विभजेरन् सुताः पित्रोरित्येकशेषोक्तिरपार्थिका स्यात्। सुतानामप्यभावे पौत्राणां पितामहीऋणधनविभक्तृत्वं, पुत्रपौत्रैः ऋणं देयमिति पौत्राणामपि पितामहीकृतर्णापाकरणाधिकारात् ऋक्थभाज ऋणमपाकुर्य्युरिति स्मरणाच्च। भिन्नपितृकाणान्तु विषमसंख्यानां पौत्राणां समवाये पितामहीऋणधनविभागेऽपि पितामहधनविभागवत् पितृतो भागकल्पना। एवमेव भिन्नमातृकाणां दौहित्रीणां दौहित्राणां विषमसंख्यानां मातृतो भागकल्पना, प्रतिमातृ वा स्वे वर्गे भागविशेष इति गौतमस्मरणात्।

यत्तु उशनसैवोक्तं, दुहितॄणामभावे तु रिक्थं पुत्रेषु तद्भवेदिति तदप्रत्तदुहितृविषयं तत्र तु कालभर्त्तृसम्भवेनान्वयासम्भवात्। एवञ्च कात्यायनोक्तं यौतकविषयमिति मन्तव्यं। भार्य्याया ऊर्द्ध्वमन्वयाभावे भर्त्तरि भार्य्या-ऋक्थं भवेत्। अप्रजःस्त्रीधनं भर्त्तुर्ब्राह्म्यादिषु चतुर्ष्वपीति याज्ञवल्क्यस्मरणात्, अपिशब्दात् गान्धर्व्वेऽपि। अतएव मनुः। ब्राह्मदैवार्षगान्धर्व्वप्राजापत्येषु यद्धनं। अतीतायामप्रजसि भर्त्तुरेव तदिष्यते। उक्तपञ्चविधविवाहेषु संस्कृताया भार्य्याया यद्धनं तत्तस्या दुहित्रादि-

पौत्रान्तधनहारिसन्ततेरभावे सति अतीतायां भर्त्तुरेवेष्यते न पुनः भ्रात्रादीनां बन्धूनामित्यर्थः।

यत्तु कात्यायनेनोक्तं बन्धुदत्तन्तु बन्धूनामभावे भर्तृगामि तदिति। तदुक्त-पञ्चविधेतरसंस्कृतस्त्रीधनविषयं। तथाच सएव। आसुरादिषु यल्लब्धं स्त्रीधनं पैतृकं स्त्रिया। अभावे तदपत्यानां मातापित्रोस्तदिष्यते। पैतृकं मातापितृ-सकाशाद्दानेनागतं, तदपत्यानामभावे आसुरादिषु संस्कृतायां उत्पन्नापत्यानामभावे। अपत्यग्रहणं पूर्व्वोक्त दुहित्रादिपौत्रान्तानां स्त्रीधनहारिणामुपलक्षणार्थं। यत्तु यमेनोक्तं। आसुरादिषु यद्द्रव्यं विवाहेषु प्रदीयते। अप्रजायामतीतायां पितैव तु धनं हरेदिति। अत्र प्रदीयते पित्रेति शेषो द्रष्टव्यः. ततश्च न पूर्व्वोक्त-वचनविरोधः।

एवं पितृव्यमातुलादिबन्धुदत्तं स्त्रीधनं प्रति सम्भवेऽपि, पितृव्यादिबन्धूनां अन्यथा भर्त्तुरेवेति आसुरादिष्ववगन्तव्यं।

किञ्चिद्बन्धुदत्तं न दातुर्भवतीत्याह गौतमः। भगिनीशुल्कं सोदर्य्याणामूर्द्ध्वं मातुरिति। शुल्काख्यस्त्रीधनं पूर्व्वप्रकरणे निरूपितं। तद्दातारो वरादय स्तेषां दातृत्वेऽपि तद्धनं न भवति किन्तु धनस्वामिनीसोदर्य्यभ्रातॄणां तेषामभावे मातु र्भवतीत्यर्थः।

यत् पुनर्हरतीत्यनुवृत्तौ शङ्खेनोक्तं, स्वं स्त्रीशुल्कं वोढेति। तदपरिसमाप्ते विवाहे सति मृतायां वध्वां द्रष्टव्यं। मृतायां दत्तमादद्यात् इति याज्ञवल्क्य-स्मरणात्, दत्तं शुल्कं अलङ्कारादिकं वा आदद्याद्वेति शेषः।

कन्याधनं प्रत्याह बौधायनः। ऋक्थं मृतायां कन्यायां गृह्णीयुः सोदराः स्वयं, तदभावे तु तन्मातुस्तदभावे पितुर्भवेत्। गौणमातृपरिगणनपूर्व्वकं तद्धनहारित्वमाह बृहस्पतिः। मातुःस्वसा मातुलानी पितृव्यस्त्री पितृष्वसा। श्वश्रूः पूर्व्वजपत्नीच मातृतुल्याः प्रकीर्त्तिताः। यदासामौरसो न स्यात् सुतो दौहित्र एववा तत्सुतो वा धनं तासां स्वस्त्रीयाद्याः समाप्नुयुरिति। स्वस्त्रीयो धनस्वामिन्या भागिनेयः स्वमातृष्वसृधनमवाप्नुयात्। एवमाद्यशब्देन परिगृहीता यथाक्रमेण स्वकीयमातृतुल्याया धनं समाप्नुयुः। एवमेव सपत्नीसन्तानोऽपि उपमातृधनं तत्सन्तानभर्त्राद्यभावे समाप्नुयात्।

क्वचित्तु भर्तृपितृभ्रात्रादिसद्भावेऽपि सपत्नीनां सन्तानविशेषस्य उपमातृधन-भागित्वमाह। मनुः, स्त्रियास्तु यद्भवेद्वित्तं पित्रा दत्तं कथञ्चन ब्राह्मणी तद्धरेत् कन्या तदपत्यस्य वा भवेत्। पित्रा दत्तमिति वदन् पूर्व्वोक्तधनहर्तृभर्त्तृपितृप्रभृतिषु

सन्तत्यपीति दर्शयति। भर्त्तृविजातीयस्त्रीधनं तत्सन्तानाभावे सति भर्त्तृसजातीय-स्त्र्यन्तरकन्या तत्सन्ततिर्वा हरेदित्यर्थ:।

एवञ्च भर्तृविजातीयानेकस्त्रीषु सन्तानशून्यायां मृतायां धनं स्त्र्यन्तरकन्या तत्सन्ततिर्व्वा न हरेत् किन्तु ब्राह्मादिषु भर्त्तैव। शेषेषु धनदातैवेत्यनुसन्धेयं।

उक्तार्थोपसंहारस्तु कात्यायनेन कृत:। स्त्रीधनस्य विभागोऽयं सधर्म्म: परिकल्पित इति। इत्येवं निरूपितो धर्म्मोऽर्थं कल्पितो विभाग: स्त्रीधनस्य अध्यवसेय इत्यर्थ:।

इति स्मृतिचन्द्रिकायां स्त्रीद्वारागतधनविभाग:।

अथ गौणपितृद्वारागतधनविभाग.।

तत्र मनु:। न भ्रातरो न पितर: पुत्रा ऋक्थहरा: पितु:। पिता हरेद-पुत्रस्य ऋक्थं भ्रातर एव वा।

ननु एक एवौरस: पुत्र: पित्र्यस्य वसुन: प्रभुरिति तेनैवोक्तत्वात् पितृरिक्थे भ्रात्रादीनामप्रसक्तिरिति कथं तत्प्रतिषेधोऽवकल्प्यते। नच प्रनष्टपुत्रविषयेऽव-कल्प्यतइति वाच्यं पुत्रा ऋक्थहरा इति विधानानवकल्पनात्।

उच्यते, पुत्रा ऋक्थहरा: पितुरित्यत्र पुत्रपितृशब्दौ गौणौ। एवञ्चायमर्थ:। क्षेत्रजादिपुत्रा: क्षेत्रस्वाम्यादिपितृरिक्थहरा: न तद्भ्रात्रादय इति।

क्षेत्रजादिपुत्रा अपि तेनैव दर्शिता:। यस्तल्पज: प्रमीतस्य क्लीवस्य व्याधितस्य वा, स्वधर्म्मेण नियुक्तायां स पुत्र: क्षेत्रज: स्मृत:। माता पिता वा दद्यातां यमद्भि: पुत्रमापदि, सदृशं प्रीतिसंयुक्तं स पुत्रो दत्त्रिम: स्मृत:।२। सदृशन्तु प्रकुर्य्याद्यं गुणदोषविचक्षणं, पुत्रं पुत्रगुणैर्युक्तं स विज्ञेयस्तु कृत्रिम:।३। उत्पद्यते गृहे यस्तु न विज्ञायेत् कस्य वा, स गृहे गूढ उत्पन्न स्तस्य स्याद्यस्य तल्पज:।४। मातापितृभ्यामुत्सृष्टं तयोरन्यतरेण वा, यं पुत्रं परिगृह्णीयादपविद्धस्तु स स्मृत:।५। पितृवेश्मनि कन्यातु यं पुत्रं जनयेद्रह:। तं कानीनं वदेन्नाम्ना वोढ़: कन्यासमुद्भवं। ६। या गर्भिणी संस्क्रियते ज्ञाताज्ञातापि वा सती, वोढ़: स गर्भो भवति सहोढ

इति उच्यते । ७ । क्रीणीयाद्‌ यस्त्वपत्यार्थं मातापित्रो र्यमन्तिकात्‌ । स क्रीतकः सुत स्तस्य सदृशो ऽसदृशोऽपिवा । ८ । या पत्या वा परित्यक्ता विधवा स्वेच्छयात्मनः । उत्पादयेत्‌ पुनर्भूत्वा स पौनर्भव उच्यते । ९ । मातापितृविहीनो य स्त्यक्तो वास्यादकारणात्‌ आत्मानं स्पर्शयेद्यस्मै स्वयन्दत्तस्तु स स्मृतः । १० । यं ब्राह्मणस्तु शूद्रायां कामादुत्पादयेत्‌ सुतम्‌ स पारयन्नेव शव स्तस्मात्‌ पारशवः स्मृतः । ११ । क्षेत्रजादीन्‌ सुतानेतानेकादश यथोदितान्‌ पुत्रप्रतिनिधीनाहुः क्रियालोपान्मनीषिण इति । आहुरिति पुत्रदानविधानस्योपलक्षणार्थं । तत्प्रदानञ्चास्माभिर्दत्तप्रदानिकपदे दर्शितं । आदपि दुर्भिक्षादौ । अथवा यद्दोतुरापदि पुत्राभावे । सदृशं दातुः प्रतिग्रहीतुश्च सवर्ण । प्रीतिसंयुक्तं नतु लोभादिसंयुक्तं । प्रकुर्य्यात्‌ पुत्रत्वेन स्वीकुर्य्यात्‌ । सदृशोऽसदृशोऽपि क्षेत्रत्र गुणापेक्षयेति शेषः । गूढे भार्य्यायां । उत्सृष्टः दुष्टमुहूर्त्तादिहेतुतो न पातित्यतः । पारयन्नेव शवः जीवन्नेव शवः । पुत्रप्रतिनिधीन्‌ गौणपुत्रान्‌ । क्रियालोपादौरसाभावे तत्कर्त्तृक-कियालोपात्‌ बिभ्यतः । मनीषिण आहुरिति सम्बन्धः ।

एवं निरूपितगौणपुत्राणां सर्व्वेषां युगान्तरे पुत्रत्वेन परिग्रहः कलौतु दत्तकस्यैकस्य दत्तौरसेतरेषान्तु पुत्रत्वेन परिग्रह इति । कलेरादौ धर्म्मगुप्त्यर्थं महात्मभिर्दत्तकौरसेतरेषां पुत्रत्व परिग्रहनिवारणात्‌, पुत्रिकाकरणमप्यस्मादेव वाक्यात्‌ कलौ निवारितं दत्तौरसेतरत्वात्‌ पुत्रिकायाः । एवञ्च कलावौरसपुत्रपौत्रयोरभावे दत्तकएव गौणपुत्रो भवति नान्य इत्यनुसन्धेयं ।

मुख्योऽपि पुत्रः कलौ सवर्णभार्य्याभावे नास्ति असवर्णकन्यकाविवाहनिषेधात्‌ । तथाच धर्म्मज्ञवाक्यं कन्यानामसवर्णानां विवाहश्च द्विजन्मभिरिति । अत्रापि कलेरादौ धर्म्मगुप्त्यर्थं महात्मभिर्निवारित इति वाक्यशेषोद्रष्टव्यः । अतएवास्माभिरसवर्णापुत्राणां दत्तकेतरेषां गौणपुत्राणां पुत्रिकाया स्तत्सुतस्यच भागविधयो न निबध्यन्ते संप्रत्यननुष्ठीयमानत्वात्‌ वृथाच ग्रन्थविस्तारापत्तेः ।

यत्पुनर्मनुनोक्तं । भ्रातॄणामेकजातानां यद्येकः पुत्रवान्‌ भवेत्‌, सर्व्वे ते तेन पुत्रेण पुत्रिणोमनुरब्रवीदिति तन्न परमार्थतो भ्रात्रन्तरस्यापि तेनैव पुत्रवत्त्वमाचष्टे भ्रातृपुत्रसद्भावे भ्रात्रन्तरस्य पुत्रवत्त्वानवगमात्‌ । अतएव याज्ञवल्क्येन पत्नी दुहितर इत्यादिना भ्रातृपुत्रसद्भावेऽपि स्वर्यातस्य ह्यपुत्रस्येत्युक्तं भ्रातृपुत्रस्य च पत्नीदुहितृपितृभ्रात्रभावे सति अपुत्रधनभागित्वञ्च अतएव तत्रोक्तं ।

एवं तर्हि मनुवचनस्य का गतिः उक्तं अस्माभिः श्राद्धाधिकारनिरूपणप्रकरणे भ्रात्रन्तराणां पुत्रवत्त्वोक्तिः ग्रामस्य तात इतिवदौरसप्रशंसार्थेति ।

यत्तु संग्रहकारेणोक्तं । यद्येकजाता बहवो भ्रातरस्तु सहोदराः । एकस्यापि सुते जाते सर्व्वे ते पुत्रिणः स्मृताः । बह्वीनामेकपत्नीनामेष एव विधिः स्मृतः । एका चेत् पुत्रिणी तासां पिण्डदस्तु स इष्यत इति । तस्य पूर्व्वोक्तेन सहाविरोधाय देवस्वामिना तात्पर्य्यार्थ उक्तः । उभयत्रापि नान्यः प्रतिनिधिः कार्य्य इति ग्रन्थेन, उभयत्रापि यद्येकजाता इत्यादि वचनद्वयेऽपि भ्रातृसुते सपत्नीसुतेच पुत्रप्रतिनिधितया कथञ्चित् कर्त्तुं शक्ये सति तदन्यः प्रतिनिधि र्न कार्य्य इति तात्पर्य्यार्थो बोद्धव्य इत्यर्थः ।

एवञ्च गौणपितृद्वारा धनागमनं कलौ दत्ताख्यं पुत्रं प्रत्येव । अत्र मनुः उपपन्नो गुणैः सर्व्वैः पुत्रो यस्यतु दत्त्रिमः । आहरेतैव तद्रिक्थं संप्राप्तोऽप्यन्यगोत्रतः । अपिशब्दात् सगोत्रत. संप्राप्तोऽप्यत्र तृतीयपदार्थो देवस्वामिना विवृतः । तदीयं सर्व्वरिक्थं गोत्रञ्चैव हरेत चेति । एवञ्च पितृत्वापादनक्रिययैव दत्त्रिमस्य पुत्रस्य ग्रहीतुर्द्धने स्वामित्वं तत्सगोत्रत्वञ्च भवतीति मन्तव्यं, दातुर्द्धनेतु दानात् पुत्रत्वनिवृत्तिद्वारा दत्त्रिमस्य स्वत्वनिवृत्तिः दातृगोत्रनिवृत्तिश्च भवतीति मन्तव्यं । अनेनाभिप्रायेणोक्तं गोत्ररिक्थे जनयितु र्न हरेद्दत्त्रिमः सुत इति । प्रतिग्रहीतृरिक्थहरणेऽपि सर्व्वं क्वचिद्विषये न हरेत्, तथाच वशिष्ठः । तस्मिन् प्रतिगृहीते चेदौरसो जायते सुतः । रिक्थे चतुर्थभागी स्यादिति ।

इति स्मृतिचन्द्रिकायां गौणपितृद्वारागतधनविभागः ।

अथापुत्रद्वारागतधनविभागः ।

तत्र मनुः । पिता हरेदपुत्रस्य रिक्थं भ्रातर एव चेति । अत्रार्थो व्यक्तः, तात्पर्य्यार्थस्त्वव्यक्तः संग्रहकारेण दर्शित. । अशेषात्मजहीनस्य मृतस्य धनिनो धनं । केनेदानीं ग्रहीतव्यं इत्येतन्मनुनोच्यते । अस्यार्थो मुख्यगौणपुत्रहीनस्य धनवतो मृतस्य धनमिदानीं तन्मरणानन्तरं केन हर्त्तव्यमित्याकाङ्क्षायां पित्रादिना हर्त्तव्यमित्येतदधुना पित्राद्यपेक्षया बहुविधोपकारकासन्नजनाभावे मनुनोच्यत इति । अतएव पित्रादिभ्यो गौणपुत्राणामासन्नतरत्वं ज्ञात्वा संग्रहकारेण पिता हरेदपुत्रस्ये त्यस्याशेषात्मजहीनस्येति तात्पर्य्यमुक्तं तदवश्यमेव ।

किन्तु यथा गौणपुत्राणां दृष्टादृष्टोपकारकत्वेन पित्राद्यपेक्षयाऽग्रेसरत्वात् तदपेक्षया चासन्नतरत्वं, तथा पत्न्या अपि दृष्टादृष्टोपकारकरणे श्रुतिस्मृत्यादिपर्य्यालोचनया पित्राद्यपेक्षयासन्नतरत्वमस्ति पत्न्या अभावे, पिता हरेदपुत्रस्येति एतन्मनुनोच्यते इत्येवं तात्पर्य्यमूह्यं।

अतएव दृष्टादृष्टोपकारकत्वलक्षण सम्बन्धेनान्यापेक्षया पत्न्याः प्रत्यासन्नत्वमभिधाय बृहस्पतिना गौणपुत्राभावे तिष्ठत्स्वपि पित्रादिषु सकुल्यान्तेषु पत्न्याः एव पतिधनभागित्वं दर्शित। आम्नाये स्मृतितन्त्रेच लोकाचारे च सूरिभिः। शरीरार्द्धं स्मृता जाया पुण्यापुण्यफले समा। यस्य नोपरता भार्य्या देहार्द्धं तस्य जीवति। जीवत्यर्द्धशरीरेच कथमन्यः समाप्नुयात्। कुल्येषु विद्यमानेषु पितृभ्रातृसनाभिषु। असुतस्य प्रमीतस्य पत्नी तद्भागहारिणीति। अत द्वितीयार्द्धेन दृष्टादृष्टोपकारसम्पादने पित्रादिभ्यः पत्न्याः प्रत्यासन्नत्वमभिहितं। अवयवार्थस्तु, आम्नाये वेदे, अर्द्धोवा एष आत्मनो यज्जायेतेत्येवमादौ, आत्मनो देहस्येत्यर्थः। एतदुक्तं भवति, देहार्द्धं अर्द्धाङ्गं यथा दृष्टादृष्टोपकारि तद्वज्जायापीति। स्मृतितन्त्रे धर्म्मशास्त्रे, पतितार्द्धं शरीरस्य यस्य भार्य्या सुरां पिवेत्। पतितार्द्धशरीरस्य निष्कृति र्न विधीयत इत्येवमादौ, लोकाचारे लोकाचारानुमतार्थशास्त्रे। शरीरार्द्धमयीं जायां कोऽपि हास्यति पण्डित इत्येवमादौ, पुण्यापुण्यफले समा, कर्म्मणिसमाधिकारात्। असुतस्य मुख्यगौणसुतहीनस्य पत्नी यज्ञाधिकारापादकप्रशस्तब्राह्मादिविवाहसंस्कृता, पत्युर्नो यज्ञसंयोग इति पाणिनिस्मरणात्।

तेन क्रीता भार्य्या पत्नीपदेन व्यावर्त्तिता, तस्याः पत्नीत्वायोगात्। तथाच स्मृत्यन्तरं। क्रयक्रीता तु या नारी न सा पत्नी विधीयते। न सा दैवे न सा पित्रे दासीं तां कवयो विदुः। पत्नीत्वाभावे केवलं दृष्टोपकारकत्वमेव नादृष्टोपकारकत्वं स्त्रिया इति दर्शयितुं दासीं विदुरित्युक्तं।

एवञ्च पित्रादिकर्म्मण्यर्हतापि पतिभागहारित्वे प्रयोजिकेति पत्नीग्रहणेन ज्ञापितं। अतएव श्रौतस्मार्त्तादिकर्म्मणि पातिव्रत्येन परीक्षिताधिकारार्हतया एव पत्न्याः पतिधनलाभ इत्याह प्रजापतिः। पूर्व्वप्रमीताग्निहोत्रं मृते भर्त्तरि तद्धनं लभेत् पतिव्रता नारी, धर्म्म एष सनातनः। अग्निहोत्रशब्देन तत्साधनाग्निर्लक्ष्यते, पतिव्रता सुसंयता, व्रतनिमित्तेन श्रौतस्मार्त्तकर्म्माधिकारार्हताभर्त्तासहवासेन स्थितेति यावत्। नारी, पत्नी। अग्निहोत्रलाभोक्तेः पत्नीत्वावगमार्थत्वात् कर्म्मार्हतायाः पित्र्ये कर्म्मणि भ्रात्राद्यपेक्षया अग्रेसरत्वं बृहस्पतिना दर्शितं। प्रजाभावेतु पत्नी स्यात् पत्न्यभावे तु सोदर इति।

अत्र वृद्धमनुः। अपुत्रा शयनं भर्त्तुः पालयन्ती व्रते स्थिता पत्न्येव दद्यात् तत्पिण्डं कृत्स्नमंशं लभेत च। उत्तरार्द्धे त्वर्थक्रमेण पाठक्रमबाधो द्रष्टव्यः। ततश्चायमर्थः। उक्तलक्षणा पत्न्येव भर्त्तुरंशं कृत्स्नं पूर्व्वं लभेत पश्चात् पिण्डं दद्यात्, न पुनस्तस्यां सत्यां भ्रात्रादिरिति। भर्त्तुः शयनं पालयन्ती सुसंयतेत्यर्थः। व्रते स्थिता, पत्यौ जीवत्यपि भर्त्तुरनुज्ञया व्रतादिपरा, कामं भर्त्तुरनुज्ञया व्रतोपवासनियमेज्यादीनामारम्भः स्त्रीधर्म्ममिति शङ्खलिखितस्मरणात्, अनेनास्तिकतापि पत्यंशलाभे प्रयोजिकेति वचोभङ्ग्या ज्ञापितमिति मन्तव्यं।

यद्यपि विवाहादेव पतिधने कृत्स्ने च पत्न्या अपि स्वाम्यमाजीवनात् पत्नीत्वतया सिद्धं तथापि मृतपतितया स्वामित्वं लभते इत्येवमर्थं लभेत चेत्युक्तं।

तत् पिण्डकृत्स्नपदयोरर्थः प्रजापतिना प्रपञ्चितः। जङ्गमं स्थावरं हेम कुप्यं धान्यं रसाम्बरं। आदाय दापयेच्छ्राद्धं मासषाण्मासिकादिकमिति। पितृव्यगुरुदौहित्रान् भर्त्तुः स्वस्रीयमातुलान्। पूजयेत् कव्यपूर्त्ताभ्यां वृद्धानाथातिथींस्तथेति। कुप्यं त्रपुसीसकादिकं, कव्यं पित्रर्थं संकल्पितं द्रव्यं, पूर्त्तं पूर्त्तखातादिकर्म्माङ्गभूतं दक्षिणादिकं। एतदुक्तं भवति स्थावरेणापि सहितं कृत्स्नमंशमादाय धनसाध्यस्वाधिकारश्राद्धपूर्त्तादिकं दानादिकञ्च पत्युरात्मनश्च श्रेयःसाधनं कर्म्मजातं, पतिपक्षऋत्विगाचार्य्यादिपुरःसरं पत्न्या गृहीतधनानुसारेण कार्य्यमिति।

एवञ्च यत् कैश्चिदुक्तं। पत्नीगृहीतं पतिपक्षभोग्यं पतिपक्षानुपकारकं वृथा यास्यतीति न पत्नी पतिधनभागिनीति, तदसिद्धहेतुकत्वात् हेयं।

एतच्च पत्नीस्वामित्वं विभक्ते पत्यौ द्रष्टव्यं। यथाह वृहस्पतिः। यद्विभक्ते धनं किञ्चिदाध्यादि विविधं स्मृतं। तज्जाया स्थावरं मुक्त्वा लभेत मृतभर्त्तृका। यत्किञ्चिदाध्यादि विविधधनं स्थावरजङ्गमात्मकं भर्त्तृस्वामिकं स्मृतं तत् सर्व्वं पत्न्या एव। विभक्तग्रहणात् अविभक्तविषये तु सहवासिन एव पितृभ्रात्रादयो मृतापुत्रधनं लभेरन्निति गम्यते। जाया पत्नी।

स्थावरं मुक्त्वेत्येतद्दुहितृरहितपत्नीविषयं। पत्नीमात्रविषये जङ्गमं स्थावरं हेम कुप्यं धान्यं रसाम्बरं आदायेति पूर्व्वोक्तवचनविरोधः स्यात्। न च तद्विरोधात् अविभक्तपत्यंशविषयं, वृत्तहीनपत्नीविषयञ्चेदं वचनमस्त्विति वाच्यं। यत एव प्रकारान्तरव्यवस्थां निराकर्त्तुमाह स एव। वृत्तस्यापि कृतेऽप्यंशे न स्त्री स्थावरमर्हतीति। सन्तानवृत्तिभूतस्थावरलब्ध्यर्हतायां सन्तानशालित्वापेक्षेति तच्छून्या स्त्री व्रतस्थापि विभक्तविषयेऽपि स्थावरं नार्हतीत्यर्थः।

यदपरमुक्तं तेनैव। मृते भर्त्तरि भर्त्तंशं लभेत कुलपालिका। यावज्जीवं नहि स्वाम्यं दानाधमनविक्रय इति। कुलपालिका वंशपालिका व्रतस्थेति यावत्। तद्व्रतानाथात्मायुपजीवनाया दृष्टार्थदानविधानात् तदितरदृष्टार्थदानादावस्वातन्त्र्य-प्रतिपादनार्थमिति मन्तव्यं।

एवञ्च धर्म्मार्थदानेस्वातन्त्र्यमस्त्येव। अतएव धर्म्मार्थदानमनिशमावर्त्तनीय-मित्याह सएव। व्रतोपवासनिरता ब्रह्मचर्य्ये व्यवस्थिता। धर्म्मदानरता नित्यमपुत्रापि दिवं व्रजेदिति। नहि पारतन्त्र्ये नित्यनैमित्तिकक्रिया युज्यते। एवञ्चादृष्टसाधक द्रव्यसम्पादनार्थकयो राधिविक्रययोरपि स्वातन्त्र्यमप्रतिषिद्धमिति मन्तव्यं।

यदपरमुक्तं कात्यायनेन, अपुत्रा शयनं भर्त्तुः पालयन्ती व्रते स्थिता। भुञ्जीता-मरणात् क्षान्ता दायादा ऊर्द्ध्वमाप्नुयुरिति। क्षान्ता दायाधिकारीतरधनविनि-योगप्रतिबन्धं सहमानेत्यर्थः। तदविभक्तदशायां रक्षणभरणासमर्थेषु कार्य्यान्तरव्यग्रेषु वा श्वशुरादिषु पत्न्या स्वयमेव जीवनार्थमुपात्ताविभक्तद्रव्यविषयं। विभक्तद्रव्य-विषयत्वे उक्तमत्वादिवचनविरोधापत्तेः।

रक्षणादिसमर्थेषु श्वशुरादिषु अविभक्तधनग्राहिषु सत्सु तैरेव गृहीतधनैर्भरणं कार्य्यं। तथाच नारदः। या पत्नी विधवाः साध्वी ज्येष्ठेन श्वशुरेण वा गोत्रजेनापि वान्येन, भर्त्तव्याच्छादनाशनेः। धनग्राहिणेति सर्व्वत्र ज्येष्ठादौ शेषो द्रष्टव्यः।

धनग्रहणनिमित्तत्वाद्भरणस्यात्र विशेषमाह कात्यायनः। स्वर्य्याते स्वामिनि स्त्रीतु ग्रासाच्छादनभागिनी। अविभक्तधनांशन्तु प्राप्नोत्यामरणान्तिकं। धनांशं यावता धनेन क्लृप्तजीवनं धनसाध्यन्तु नित्यनैमित्तिककर्म्म काम्यं व्रतादिकं सिद्ध्यति तावद्धनमित्यर्थः। तुशब्दो वाशब्दार्थे धनांशं प्राप्नोति, एतावद्धनसम्पादकक्षेत्रांशं वा प्राप्नोतीत्यर्थः, धनग्रहणस्य वर्त्तनाद्युपायोपलक्षणार्थत्वात्। अन्नायः पक्षः पत्नीव्यतिरिक्तभार्य्याविषयः।

जीवनमात्रसाधनधनधान्यस्य स्वत्वे इयत्तामाह नारदः। आढकास्तु चतुर्व्विंश-चत्वारिंश-पणा स्तथा प्रतिसंवत्सरं साध्वी लभते मृतभर्त्तृका। आढको नामाष्टोत्तरद्विशतप्रस्थपरिमितो धान्यसञ्चयः। पणः कार्षापणः। सच व्यावहारिक-निष्काशीतिभागस्य स्थाने क्वचिद्देशे प्रवर्त्तते। तेन यत्र देशे पणो न प्रवर्त्तते तत्र व्यावहारिकनिष्काशीतिभागं लभते। क्लृतेऽप्यंशे इत्यनुवृत्तौ बृहस्पतिः। प्रदद्यात्येव तत् पिण्डं क्षेत्रांशं वा यदृच्छयेति पिण्डग्रहणं अशनाच्छादनोपलक्षणार्थं। एवञ्चायमर्थः अशनाच्छादनं पूर्व्वोक्तपरिमाणकं पूर्व्वोक्तधनांशसम्पादकक्षेत्रांशं वा

स्वेच्छया भर्त्तृश्राद्धपत्नीव्यतिरिक्तविधवायै विभक्तविषये जीवनार्थं प्रदद्यादिति, एवकारः प्रदानस्यावश्यकत्वज्ञापनार्थः श्वश्र्वादिशुश्रूषकस्त्रीविषयो ऽयमाद्यः पक्षः। तत्र ज्ञापकमुपरिष्टाद्भविष्यति। दत्तञ्च दायकेतरैरपि कालनियमइत्याह। स्थावराज्जीवनं स्त्रीभ्यो यद्दत्तं श्वशुरेणतु द तच्छक्यमपाकर्त्तु मितरैः श्वशुरेष्वते, श्वशुरग्रहणं भरणकारिण उपलक्षणार्थं स्थावरग्रहणं धनस्योपलक्षणार्थं। तेन धनादपि जीवनार्थं स्त्रीभ्यो दत्तमपाकर्त्तु मशक्यमित्यवगन्तव्यं।

क्वचिदपहर्त्तव्यमित्याह कात्यायनः। भोक्तुमर्हति कृप्तांशं गुरुशुश्रूषणे रता। न कुर्य्यात् यदिशुश्रूषां चैलपिण्डे नियोजयेत्। कृप्तांशमपहृत्येति शेषः। एवमकार्य्यकारिण्यादावपि कृप्तांशहरणं कार्य्यमित्याह सएव। अपकारक्रियायुक्ता निर्लज्जा यार्थनाशिका। व्यभिचाररता याच स्त्री धनं नच सार्हति। धनं जीवनार्थमुपक्लृप्तधनांशं चेदंशं वा जीवनाद्यर्थमुपक्लृप्तं। उक्ताचतुर्व्विधा स्त्री नार्हतीत्यर्थः।

धनग्रहणं अशनाच्छादनस्याप्युपलक्षणार्थं। अतएव नारदः। भरणञ्चास्य कुर्व्वीरन् स्त्रीणामाजीवनक्षयात्। रक्षन्ति शय्यां भर्त्तुश्चेदाच्छिन्द्युरितरासु तत्। इतरासु व्यभिचाररतासु। तद्भरणं अशनाच्छादनोपकल्पितधान्य वस्त्रमूल्य द्रव्य माच्छिन्द्युरपहरेयुरित्यर्थः।

यत्तु मनुनोक्तं एतदेवविधिं कुर्य्यात् योषित्सु पतितास्वपि। वस्त्रान्नमासां देयन्तु वसेयुश्च गृहान्तिक इति। तद्भर्त्तृकर्त्तृकभरणविषयमिति पूर्व्वाङ्कत एवावगम्यते इत्यविरोधः।

या पुनः शङ्कितव्यभिचारा तस्यास्तु विभक्तविषयेऽपि पत्नीत्वेऽपि हारीतोक्तं कार्य्यं। विधवा यौवनस्था चेत् नारी भवति कर्कशा। आयुषः क्षपणार्थन्तु दातव्यं जीवनं तदेति। कर्कशा, क्रूराः, साहसाढ्या सम्भावितव्यभिचारीति यावत्।

यत् पुनर्म्मनुना, पत्न्यव कृत्स्नमंशं लभेतचेति वृद्धमनूक्तविरुद्धमुक्तं। एषां ज्येष्ठः कनिष्ठोवा हीयेतांशप्रदानतः। म्रियेतान्यतरो वापि तस्य भागो न लुप्यते। सोदर्य्या विभजेरंस्ते समेता सहिताः समं भ्रातरो येच संसृष्टा भगिन्यश्च सनाभय इति। हीयेत पातित्यप्रव्रज्यादिनिमित्तेनेति शेषः।

यदपि नारदेन। संसृष्टानान्तु योभाग स्तेषामेव स इष्यत इत्युक्त्वा उक्तं। भ्रातॄणामप्रजाः प्रेयात् कश्चिच्चेत् प्रव्रजेत वा विभजेयु र्धनं तस्य शेषा स्ते स्त्रीधनं विनेति तदेतद्द्वयमपि संसृष्टद्रव्यविषयमिति स्पष्टमेव, तेन नास्ति विरोधः। एवञ्च पत्न्यव कृत्स्नमंशं लभेतेति विभक्तासंसृष्टविषयमिति मन्तव्यं।

तथा संग्रहकारः। भातृषु प्रविभक्तेषु संसृष्टेष्वथवा पुनः। गुर्व्वादेशाग्नियोगस्था पत्नी धनमवाप्नुयादिति। गुर्व्वादेशाग्नियोगस्थेति धारेश्वरमतं विश्वरूपादिभिः सम्यक् दूषितत्वात् उपेक्षणीयं। ततश्च संग्रहकारोक्तविषये वृद्धमनूक्तगुणविशिष्टा पत्नी भर्तृधनमखिलमवाप्नुयादित्येतदेव मतमादर्त्तव्यं।

यत्तु श्रुतौ च व्यक्तं। तस्मात् स्त्रियो निरिन्द्रिया अदायादा इति, तदपि न, वृद्धमन्वादिवचनबाधकं। निरिन्द्रियपुत्रसाहचर्य्यादपत्यभूतस्त्रीविषयत्वावगतेः। भवतु वा सर्व्वस्त्रीविषयत्वावगतिः। तथापि दायादतया शङ्खशास्त्रोक्त पत्न्यादिस्त्रीव्यतिरिक्तविषयार्थवादश्रुतिरिति सर्व्वं सुस्थं।

पत्नीबहुत्वे समं विभज्य अपुत्रभर्तृधनग्रहणं सर्व्वासां युक्तं एवं सर्व्वस्मृत्यैकवाक्यतया निश्चितं। पत्नीधनं ये प्रतिबध्नन्ति ते राज्ञा नियन्तव्या इत्याह प्रजापतिः। तत्सपिण्डा बान्धवाश्च ये तस्याः परिपन्थिनः, हिंस्युर्धनानि तान् राजा चौरदण्डेन शासयेत्।

इति स्मृतिचन्द्रिकायां अपुत्रदारागतधनविषयाणि।

दुहित्राद्यधिकारः।

अथ दुहित्रादिविषयाणि कानिचिद्वचनानि लिख्यन्ते।

तत्र बृहस्पतिः। भर्त्तुर्धनहरी पत्नी तां विना दुहिता स्मृतेति, तां विना तस्या अप्यभावइत्यर्थः। अतएव विष्णुः अपुत्रस्य धनं पत्न्यभिगामि तदभावे दुहितृगामीति। अस्मिन् क्रमे न्यायमाह बृहस्पतिः। अङ्गादङ्गात् सम्भवति पुत्रवद्दुहिता नृणां। तस्मात् पितृधनं त्वन्यः कथं गृह्णीत मानवः। शरीरावयवसम्बन्धेन दुहिता पुत्रसमा। पुत्रेहि पित्रवयवा बाहुल्येन संक्रामन्ति, दुहितरि त्वल्पाः। पुमान् पुंसोऽधिके शुक्रे स्त्री भवत्यधिके स्त्रिया इति स्मरणात् तेन किञ्चिन्न्यूनत्वात् पुत्रवदित्युक्तं। अन्यः पुत्रपत्नीव्यतिरिक्तः, पित्रादिः मानवः तिष्ठत्सु

दुहितरि कथमपुत्रधनं गृह्णीतेत्यर्थः। तथाच मनुः यथैवात्मा तथा पुत्रः पुत्रेण दुहिता समा तस्यामात्मनि तिष्ठन्त्यां कथमन्यो धनं हरेत्। आत्मनि आत्मतुल्यपुत्रसमायामित्यर्थः।

नन्वेवमपि गौणपुत्रपत्न्योरभावे दुहितेति क्रमे न्यायो नोक्तः औरसाभावमात्रे दुहितेत्येतावन्मात्रसाधकत्वादुक्तन्यायस्य, सत्यं, किन्त्वेवमेव गौणपुत्रपत्न्योरभावे दुहितेत्यत्रापि क्रमे न्याय ऊहनीय इत्यभिप्रायेणोक्तं। अतएव नारदेन, तयोरप्यभावे दुहितेति क्रमानुसारिन्यायः स्वयमूहितो मन्दानुग्रहाय प्रदर्शितः।

पुत्राभावे तु दुहिता तुल्यसन्तानदर्शनादिति। स्वयमेव न्यायं विवृणोति। पुत्रश्च दुहिता चोभौ तुल्यसन्तानकारकाविति। उभौ स्वपितृश्रेयस्करसन्तानकारकावित्यर्थः। तथाहि पौत्रदौहित्रयोः पुत्रदुहितृसन्तानयोः स्वरूपत स्तुल्यत्वाभावात् कार्य्यतोऽत्र तुल्यत्वमभिप्रेतं, न ऋणापाकरणरूपव्यवहारलक्षणकार्य्येत स्तुल्यत्वं सम्भवति पुत्रपौत्रै ऋणं देयमिति स्मरणात्। तथा पितामहद्रव्यमधिकृत्य चत्र स्यात् सदृशं स्वाम्यं पितुः पुत्रस्य चोभयोरिति स्मरणाच्च पौत्रस्याधिक्यप्रतीतेः। तेनात्रादृष्टकार्य्येत स्तुल्यत्वमभिप्रेतं तच्च श्राद्धदातृत्वं पूर्व्वेषान्तु स्वधाकारे पौत्रा दौहित्रका मता इति विष्णुस्मरणात्।

एवञ्च दुहितृषु, सन्तानमुखेनादृष्टोपकारसम्बन्धेनासन्नता। नचैतावता निमित्तेन पुत्राभावे तिष्ठन्त्यां पत्न्यां दुहिता धनमर्हति, पत्न्याः साक्षादग्निहोत्रादिजन्यादृष्टोपकारसहकारित्वात् तेन पुत्राभावे दुहितेत्यत्र पुत्रग्रहणं पत्न्या अपि प्रदर्शनार्थमिति मन्तव्यं।

ननु पिता श्राद्धदानेन स्वयमेवादृष्टोपकारक इति दुहितुरपेक्षयासन्नत्वात् पत्न्यभावे पिता हरेदपुत्रस्येत्यस्यावसर इति कथं दुहितुरर्थग्रहणं नैवं तस्यामात्मनि तिष्ठन्त्यां कथमन्यो हरेद्धनमित्यनेनैवाबाधत्वात्।

तथाहि यद्यदृष्टोपकारसम्बन्धेन व्यवहिता तथापि शरीरसम्बन्धेनाव्यवहितैवात्मेसरैव। तर्हि दुहित्रभावे पिता हरेदित्यस्यावसरत्वात् नाधुनापि तस्यावसरः दुहित्रभावे दौहित्रस्य तत्कोटित्वेन पित्राद्यपेक्षयासन्नत्वात् अपुत्रपौत्रसन्ताने दौहित्रा धनमाप्नुयुः पूर्व्वेषान्तु स्वधाकारे पौत्रा दौहित्रका मता इति विष्णुस्मरणाच्च।

एवं सौपपत्तिकीं पत्न्यभावे दुहितृगामितां ब्रुवता बृहस्पतिनैव यद्दुहितृगामिधनमिति विधायकं वचनजातं तत् पुत्रिकाविषयमेव न पुनरपुत्रिकादुहितृविषयमिति धारेश्वर देवस्वामि देवरातमतं कृतितन्त्राभिज्ञत्वाभिमानोन्मादकल्पितं निरस्तं वेदितव्यं।

तथाहि तृतीयः पुत्रः पुत्रिका विज्ञायते इति वसिष्ठस्मृत्या गौणपुत्रकोटिनिविष्टायाः पुत्रिकायाः पत्न्यां सत्यामपि क्षेत्रजादिरिव, न भ्रातरो न पितरः पुत्रा ऋक्थहराः पितुरित्यादिवचनान्तरैरेव औरसाभावे ऋक्थग्राहिण्याः पत्न्या अभावे दण्डापूपन्यायेन धनभागित्वे सिद्धे पुनः किं सोपपत्तिकं धनभागित्वं अर्थं वृहस्पत्यादीनां वचनान्तरारम्भणेन, तेन तैरेव तन्मतं निरस्तमिति अलं धारेश्वरादिमतान्तरनिराकरणयत्नेनाश्राड्डीयेन।

यत्तु नारदेन पुत्रहीनपत्नीमधिकृत्योक्तं। स्यात्तु चेद्दुहिता तस्याः पित्रंशो भरणे मतः। आसंस्कारात्हरेद्भागं परतो बिभृयात् पतिरिति। तस्यार्थः। तस्याः पत्न्याः पुत्ररहिताया गताया यदि दुहिता विद्यते तदा दुहितुर्भरणाय पित्रंशो ऽभिमतः तस्मादाविवाहसंस्कारात् भरणार्थमेव दुहिता पितृभागहरा न पुनर्यथेष्टविनियोगार्थमिति।

एवञ्च सर्व्वासामेव कन्यानां पितृधनप्राप्तिरुत्सर्गइति गम्यते ततश्चास्यापवादकानि दुहितुः पितृधनप्राप्तिप्रतिपादकानि वचनानि सर्व्वाणि पुत्रिकाविषयाण्येवेति वाच्यं। दुहितृमात्रविषयत्वेतु उत्सर्गवत् सामान्यतया तदपवादाक्षमत्वादनर्थकानि भवेयुः। तस्माद्धारेश्वरादीनामेव मतमनुसर्त्तव्यं स्यादेवं यदि नारदवचनं विभक्तविषयं ततश्च स्यात्। संसृष्टविषयन्तु तदिति तस्यैव पूर्व्वापरपर्य्यालोचनया स्पष्टमवगम्यते। विभक्तविषये यानि दुहितृदायप्रतिपादकानि वचनानि तेषां तत्र प्रापकत्वमेव नापवादकत्वमिति न पुत्रिकाविषयत्वकल्पने किञ्चिन्मूलमुपलभामहे इत्यलमतिवहुना।

एवमपि न दुहितृमात्रविषयाणि तानि वचनानि। यत आह कात्यायनः। पत्नी भर्त्तुर्धनहरी या स्यादव्यभिचारिणी तदभावेतु दुहिता यद्यनूढाप्रतिष्ठिता इति। एवञ्च तानि वचनानि अनूढ़दुहितृविषयाणि अथवा निर्धनोढ़ादुहितृविषयाणीति मन्तव्यं निर्धनत्वेनैवाप्रतिष्ठितात्र व्यवस्थिता न पुनर्वन्ध्यात्वादिना सन्तानराहित्येनाप्रतिष्ठिता। तस्याः सन्तानमुखेनादृष्टोपकारकसम्बन्धाभावेन धनहारित्वायोगात्।

तदभावइत्यनेन पूर्व्वोक्ताया अव्यभिचारिण्याः पत्न्या अभावः प्रत्यवमृश्यते न पत्नीस्वरूपमात्रस्य तेन न केवलं पत्न्याः स्वरूपाभावे, दुहिता धनहारिणी किन्तु अव्यभिचारित्वरूपविशेषणाभावेऽपीति मन्तव्यं। अतएव संग्रहकारेण। तादृक् पत्न्या अभावेतु पुत्रिका धनभर्त्तीत्युक्तं न परं पत्नीस्वरूपाभावे किन्तु धनभागिनीति निरूपणार्थमुक्तविशेषणविशिष्टपत्न्यभावे पुत्रिका धनभर्त्तीत्यर्थः।

पुत्रिका धनमर्हतीतितु प्रागेव निरस्तत्वादुपेक्षणीयं तेन पत्नीस्वरूपाभावे दुहितृगामि द्रव्यं विशेषणाभावेतु पिता हरेदित्यादिवचनोक्तपित्रादिगामीति केचित् कृता विषमव्यवस्थाप्युपेक्षणीया। बृहस्पतिस्तु पत्न्या ऊर्द्ध मर्थग्राहिणीनां मुख्य-पुत्रादूर्द्धमर्थग्राहिणीनां च दुहितॄणां विशेषणान्याह। सदृशी सदृशेनोढा साध्वी शुश्रूषणे रता कृताकृता वापुत्रस्य पितुर्धनहरी तु सा। सदृशी पितुः सवर्णा यानि चत्वारि विशेषणानि पत्न्या ऊर्द्ध धनहरी दुहितृविषयाणि प्राग्धनग्राहिण्या दुहितुर्विशेषणत्वेनावशिष्टकृताकृतेत्यत्र पुत्रिकेति विशेष्यस्याध्याहारः कार्य्यः। इतरत्र दुहितेति विशेष्यस्याध्याहारः कार्य्यः वाशब्दोऽत्र व्यवस्थितविकल्पाभिधानार्थः।

एवञ्चायमर्थः, औरसपुत्रविहीनस्य धनं द्विविधापि पुत्रिका पत्न्याः पूर्व्वं गृह्णीयात् सवर्णादिविशेषणोपेता दुहिता ऊर्द्धमिति, एवञ्च पत्न्या ऊर्द्ध सवर्णादिविशेषणो-पेताप्रतिष्ठितानूढानां दुहितॄणां समवाये अनूढैव गृह्णाति पिता भर्त्तव्यत्वात्। तदभावे त्वप्रतिष्ठिता भर्त्ता भर्त्तव्यत्वेऽपि भर्त्तुर्भरणसमर्थत्वाभावेनाप्रतिष्ठितत्वात्, तदभावे सवर्णादिविशेषणोपेता, प्रतिष्ठितत्वेऽपि धनग्रहणयोग्यत्वात् तदभावे दौहित्र सत्कोटित्वात् इत्यनुसन्धेयं।

दौहित्रस्याभावेतु पितृपेक्षयान्यस्यासन्नत्वाभावात् पिता हरेदपुत्रस्य रिक्थ-मित्युक्तस्यावसरत्वात् पितृगामि धनं भवतीति अस्मिन्नेवावसरे मातृपेक्षयान्यस्या-सन्नतरत्वाभावात् अनपत्यस्य पुत्रस्य माता दायमवाप्नुयादिति उक्तस्यावसरत्वात् मातृगामि धनं भवति। अतएव याज्ञवल्क्येन पत्नी दुहितरश्चैव पितरौ भ्रातर इत्युक्तं, च शब्देन सुचितस्य दौहित्रस्यानन्तरमेव मातापितरौ समसमये धनभाजौ तयोरवान्तरक्रमन्यायाभावात् इत्यवगन्तव्यो ऽभिप्रायः।

याज्ञवल्क्योक्ताभिप्रायमबुद्धा केचित् पण्डितम्मन्यैः कश्चिन्न्याय उत्प्रेक्षितो मातुर्गर्भपोषणधारणद्वारात्यन्तोपकारित्वादेव सहस्रन्तु पितुर्माता गौरवेणातिरिच्यत इति स्मरणाच्च पितरि विद्यमानेऽपि मातुरंशग्रहणाधिकार इति। नायं न्यायो मातुरादावंशग्रहणाधिकारापादनायालं पितुरपि बहुधा सन्निधातृत्वात् विद्याप्रदत्वात् द्वयोरपि पिता श्रेयान् वीजप्राधान्यदर्शनादिति स्मरणाच्च। अन्यैः पुनरन्यथोत्प्रेक्षितं, पिता सपत्नीपुत्रेष्वपि साधारणः माता तु न साधारणीति प्रत्यासत्त्यतिशयोऽस्तीति विप्रलम्भनसदृशमिदं नहि जननीजनकयोर्जन्यं प्रति सन्निकर्षतारतम्यमस्ति। नच बहुसम्बन्धेन साधा सम्बन्धनिबन्धनात् प्रत्यासत्त्यतिशयो व्यपैति।

यदपि तैरेवोक्तं एकशेषग्रहणेऽपि कथञ्चिन्मातुः प्राथम्यमवगम्यतइति, तदपि मन्दं, मातरपितरौ भवत इत्युत्पत्तिरोत्या क्रमावगत्यभावेन याज्यात् क्रमात् प्रधानयोः

क्रमः पञ्चमे दर्शितो न पुनः सारस्वताविव्येकशेषत एवं कथञ्चित् क्रमावगति-रुपपादितेति तन्निबन्धनामेव मातुः प्राथम्यसमर्थनं। अतएव शौकरेण पित्रो र्विभज्य धनग्रहणमुक्तं तदप्ययुक्तं। पिता हरेदपुत्रस्य ऋक्थं अनपत्यस्य माता दायमवाप्नुयात् इत्येताभ्यां व्रीहियवयोर्निरपेक्षसाधनत्ववन्निरपेक्षस्वामित्वप्रतीतेः। अपरे पुनरन्यथा मातुः प्रत्यासत्तिमुन्नयन्ति सोदरस्तु सोदर इत्यत्र मातृद्वारेण सोदरवचनात् मातुः प्रत्यासत्ति र्गम्यते इति तदपि कुशावलम्बनमात्रं तथाहि भ्रातुर्भिन्नोदरात् एकोदरयोरभिन्नमातृकत्वेन प्रत्यासत्तौ विशेषोऽस्तु। जनकात् पुन र्जनन्याः पुत्रं प्रति प्रत्यासत्तौ विशेषः किंनिबन्धनो भविष्यतीति न विद्मः।

तस्मादत्र पित्रोः सद्भावे कः क्रम इत्यपेक्षायां वक्तव्यो विशेषः। यत्तूक्तं प्रभुना अव्यक्तधनत्वाद्दम्पत्यो र्येन केनचित् गृह्यमाणमुभयार्थमिति न विशेषो वक्तव्य इत्येव सोऽभिधीयते। न्यायाभावादत्र क्रमे वचनमेव शरणं वचने च प्रथमं पितुरेव धनग्रहणाधिकारः प्रतिपाद्यते। तथाच अपुत्रस्य धनं पत्न्यभिगामि तदभावे दुहितृगामीत्यनुवृत्तौ वृहद्विष्णुः तदभावे पितृगामि तदभावे मातृगामीति।

यद्यप्यपुत्रधनस्य दुहित्रभावे पितृगामित्वमुक्तं तथापि दुहित्रभावे दौहित्र-गामित्वस्य न्यायवचनाभ्यामुक्तत्वात् दौहित्राभावे पितृगामित्वमवगन्तव्यं दौहित्रस्यापि दुहितृकोटित्वात् प्रथमदौहित्रगामित्वानभिधानं वृहद्विष्णोरिति च मन्तव्यं।

मात्रभावे सोदरभ्रातृगामित्वं एकमातृकत्वेन मृतभ्रातुः प्रत्यासत्यतिशयलक्षण-न्यायात् प्राप्तं। तदभावे भिन्नोदरगामित्वं याज्ञवल्क्येन न्यायमूलक्रममेवाभिद-धताभिहितं। पितरौ भ्रातरस्तथेति भ्रातरः सोदरएवात्र भिन्नोदरापेक्षया धनं प्रति प्रत्यासन्नत्वादभिप्रेताः। ततश्च मात्रभावे सोदरभ्रातृगाम्यपुत्रधनमित्युत्सर्गो याज्ञवल्क्येन दर्शितः, तदा सोदरत्वस्वरूपविशेषविवक्षायामपि भ्रातर इति सामान्यशब्दप्रयोगेण सोदराभावे भिन्नोदरा इत्युत्सर्गे तेनैव दर्शितः।

वक्ष्यमाणविषयद्वये ऽपवादमाह कात्यायनः। विभक्ते संस्थिते द्रव्यं पुत्राभावे पिता हरेत्। भ्राता वा जननी वाथ माता वा तत्पितुः क्रमात्। तत्पितुर्माता विभक्तमृतापुत्रस्य पितु र्माता पितामहीति यावत्। पुत्रग्रहणमासन्नतरोपलक्षणार्थं तेन पुत्रादिदौहित्रान्तानां पित्रपेक्षया दृष्टादृष्टोपकारादि सम्बन्धेनासन्नतराणामभावे प्रथमं पिता हरेदित्यर्थः। वाशब्दोऽत्र योग्याभावविकल्पार्थः साम्याख्ये सिद्धरूपे वस्तुनि नहि वस्तुनि विकल्प इति न्यायेन तुल्यवत् विकल्पासम्भवात्।

एवञ्चैतदुक्तं भवति पित्रभावे भ्राता तदभावे जननी तदभावे पितामही इति क्रमादुक्तं पाठक्रमेणेत्यर्थः। अनेनैव क्रमेण विभक्तसंस्थितविषये मनुरपि पुत्रपत्नी-

दुहितृदौहित्राणामासन्नतराणामभावं अपुत्रस्येत्युपलक्षणशब्देनोक्ता पितृभ्रातृमातृपितामहीनां धनग्रहणं सार्द्धश्लोकेनाह। पिता हरेदपुत्रस्य ऋक्थं भ्रातरएव वा अनपत्यस्य पुत्रस्य माता दायमवाप्नुयात्। मातर्य्यपि च वृत्तायां पितुर्माता धनं हरेदिति। अपुत्रस्य पुत्रपत्नीदुहितृदौहित्ररहितस्येत्यर्थः। एवञ्च कात्यायन-मनु-प्रतिपादितः पित्रादि पितामह्यन्तानां धनग्रहणक्रमवचनैक-निबन्धनत्व विरुद्धनैयायिकक्रमबाधक इति न्यायविरोधशङ्कातु न कार्य्या। याज्ञवल्कीयमेव वचनं क्रमपरं तत्परत्वस्य पूर्व्वाभावे परःपर इति कण्ठोक्त्या व्यक्तत्वात्, तेन च तद्विरुद्धानीति पिता हरेदपुत्रस्येत्येवमादीनीत्यधिकारमात्रपराणि न क्रमपराणीति व्याख्याप्युपेक्षणीया। माता वा तत्पितुः क्रमादिति मातर्य्यपि च वृत्तायामिति च कात्यायनमनुवचनयोरपि कण्ठोक्त्या क्रमश्रुतेः।

मातुः पूर्व्वं भ्राता धनहारीत्यत्र विशेषमाह वृहस्पतिः। भार्य्यासुतविहीनस्य तनयस्य मृतस्यतु माता ऋक्थहरी ज्ञेया भ्राता वा तदनुज्ञयेति, भार्य्याग्रहणं न्यायवचनतो बद्धक्रमाणां दुहितृदौहित्रपितॄणामुपलक्षणार्थं। तेन सुतभार्य्या-दुहितृदौहित्रपितृविहीनस्येत्यर्थो विज्ञेयः। एवञ्च पितरौ भ्रातरस्तथेत्युक्तक्रमस्य मातुरनुज्ञाविषये विद्यमाने पितामहीविषयेच कात्यायनाद्युक्तक्रमेणापवादोऽनुसन्धेयः।

एतेनेदं निरस्तं यत् केश्चिदुक्तं मातृपितृभ्रातृभ्रातृसुतानां पितरौ भ्रातरस्तथा तत्सुता इति वचनेन बद्धक्रमत्वात् मध्येऽप्यनुप्रवेशाभावात्, भ्रातृसुतानन्तरं हि पितामही गृह्णाति तस्याः क्रमविशेषक्रमभावेनाविरोधादिति। नहि पितामह्याः क्रमविशेषोक्त्यभावः, कात्यायनवचनपाठतद्गताद्यशब्देन मानवीये मातर्य्यपि च वृत्तायामिति पदद्वयेन च पितामह्याः क्रमविशेषोक्तेः प्राक् प्रदर्शितस्य बद्धक्रमस्य न्यायमूलस्य मध्ये वचनमूलक्रमविशेषसम्भवाच्च।

यत्तु शङ्खेनोक्तं स्वर्य्यातस्य ह्यपुत्रस्य भ्रातृगामि द्रव्यं तदभावे पितरौ हरेयाताम् इति। तत् सामान्यविशेषन्यायेन विभक्तसंस्थितविषयादन्यत्र संसृष्टस्वर्य्यातविषये ऽवतिष्ठते इत्यविरोधः।

यत्तु वृहस्पतिनोक्तं पुत्राभावेतु पत्नी स्यात पत्न्यभावेतु सोदरः। तदभावे तु दायादाः पश्चाद्दौहित्रकं धनमिति तत्पत्न्याः पूर्व्वं सोदरनिवृत्त्यर्थं न पुन र्दायादशब्दनिर्द्दिष्टदुहितृभ्यः पूर्व्वं सोदरप्राप्त्यर्थं, तथात्वे अङ्गादङ्गात् सम्भवति पुत्रवद्दुहितेत्यादि स्ववचनविरोधापत्तेः।

यत्तु देवलेनोक्तं ततो दायमपुत्रस्य विभजेरन् सहोदराः तुल्या दुहितरो वापि ध्रियमाणः पितापि वा सवर्णा भ्रातरो माता भार्य्या चेति यथाक्रममिति।

यद्यप्यत्राव्यवहितान्वयो वचनसामञ्जस्येनावगम्यते तथापि पूर्व्वोक्तसर्व्ववचनन्याय-विरोधाय व्यवहितान्वयेनैवार्थो ऽवगन्तव्यः ।

तथाहि अपुत्रस्य दायं भार्य्या पत्नी अवाप्नुयात्, अथवा तुल्याः सवर्णा दुहितरो विभजेरन्, अपिवा म्रियमाणो विद्यमानः पिता हरेत्, अनर्थकः म्रियमाणशब्दो अम्रियमाणे पितरि मातेत्यन्वयावगमाय: पितुरभावे माता अवाप्नुयात्, पितुः सवर्णाः सहोदराश्च भ्रातरो यथाक्रमं पूर्व्वं सहोदरास्तदभावे सवर्णाभ्रातर-इति क्रमानतिक्रमेण विभजेरन्निति । मातृनुज्ञापितामह्यभावे विषयैव द्रष्टव्यं ।

अस्मिन्नपि विषये कात्यायनेन सुबोधक्रमो दर्शितः । अपुत्रस्याथ कुलजा पत्नी दुहितरोऽपि वा तदभावे पिता माता भ्राता पुत्रश्च कीर्त्तितः । पुत्रशब्दः सम्बन्धिशब्दत्वादिन्यायेन भ्रातृपुत्रेष्वेव वर्त्तते अतएव याज्ञवल्क्येन भ्रातर स्तत्सुता इत्युक्तं ।

यत्तु संग्रहकारेणोक्तं तावद्दुहितृभावेतु माता धनमाप्नुयात् विद्यमानेऽपि पितरि सपत्नीसुतसन्ततौ तादृङ्मातुरभावेतु पितुर्माता हरेद्धनं विद्यमानेऽपि पितरि चत्रियसुतसन्ततौ पितामह्या अभावेऽपि पिता धनमवाप्नुयात् इति सुतसन्ततावित्यत्र विद्यमानायामित्यध्याहारे कृते सति अस्यार्थः सुगमः तदेतद्धारे-श्वरोपेक्षितन्यायमूलत्वात् विश्वरूपादिभिस्तन्न्यायनिराकरणात् मूलभूतन्यायेऽसति अनादर्त्तव्यमेव । यत्पुनस्तेनैवोक्तं सोदर्य्याः सन्त्यसोदर्य्यभ्रातरो द्विविधा यदि विद्यमानेऽप्यसोदर्य्ये सोदर्य्याएव भागिन इति तत् सम्यक्न्यायमूलत्वादादरणीयमिति भ्रातृसुतेष्वयं विशेषः सोदरासोदरभ्रातृसुतसमवाये ग्राह्यः ततश्च सोदरसुताभावे-सापत्न्यभ्रातृसुताधनभाजः ।

तेषामप्यभावे के धनभाजइत्यपेक्षिते याज्ञवल्क्यः । गोत्रजा इति धनभाजइतिशेषः गोत्रजशब्दोऽत्र गोबलीवर्द्दन्यायात् पूर्व्वोक्तपितृभ्रातृतत्सुतव्यतिरिक्त पितामह-सुतादिगोत्रजेषु वर्त्तते तत्रापि स्वरूपेकशेषस्य स्वतोऽवगतेः पितामहदुहित्रादि-स्त्रीव्यतिरिक्तेषु वर्त्तते कारणान्तरादेवहि कुक्कुटौ वायसौ मिथुनीकरिष्याम इत्येवमादौ विरूपैकशेषावगतिः नचेह तथाविधकारणान्तरं प्रत्युत भ्रातृतत्सुत-साहचर्य्यात् पुमांसएव गोत्रजा गम्यन्ते किञ्च पत्नीदुहित्रादीनां ग्रहणेन दायादत्वश्रुतेरगत्या तस्मात् स्त्रियो निरिन्द्रिया अदायादिरितिश्रुतेः तेनैव स्वरूपेकशेषतया श्रुतेः सत्यां गतौ श्रुतिविरोधिनी विरूपैकशेषता दूरोत्सारिता । अतएव जीवन् पुत्रेभ्यो दायं विभजेदित्यापस्तम्बसूत्रं व्याचक्षाणेन तद्भाष्यकारेण पुत्रेभ्य एव दायं विभजेत् न स्त्रीभ्यो दुहितृभ्य इत्युक्तं ।

यद्यपि भ्रातृपुत्रौ स्वसृदुहितृभ्यामिति शाब्दसूत्या पुत्रेभ्य इत्यत्र विरूपैकशेषं ज्ञात्वा दुहितृणामनुप्रवेशोऽत्र कर्त्तुं शक्यते तथापि पुमांसो दायादा न स्त्रिय स्तस्मात् स्त्रियो निरिन्द्रिया अदायादिरिति श्रुतेरिति। एतेनेदं निरस्तं।

यत् केचिदुक्तं। गोत्रजाः पितामहीसपिण्डाः समानोदकाश्च तत्र पितामही प्रथमं धनभाक्, मातर्यपि च वृत्तायां पितुर्माता धनं हरेदिति मातुरनन्तरं पितामह्या धनग्रहणे प्राप्ते पित्रादीनां भ्रातृसुतपर्य्यन्तानां बद्धक्रमत्वेन मध्येऽनुप्रवेशाभावात् उत्कर्षे तत्सुतानन्तरं पितामही गृह्णाति अविरोधात् इति। भ्रातृसन्तानानन्तरमपि तेषां गोत्रजानाञ्च बद्धक्रमत्वाविशेषात् पितामह्यै वा सहात्र क्रमो निबध्यते इति सम्बद्धं। स्वरूपैकशेषत्वेन पुंसामेव गोत्रजानां भ्रातृसुतसह-क्रमबन्धनात्। नह्यन्यगोत्रजा पितामही मृतगोत्रजापीत्यलं बहुना।

गोत्रजा इत्येकशेषकरणमपि पितराविितिवत् न्यायमूलावान्तरक्रमाभावादेव याज्ञवल्क्यस्येति मन्तव्यं। नहि भ्रातृसुताभावे पितामहसुतो धनभागित्येवमाद्य-वान्तरक्रमे कश्चिन्न्यायोऽस्ति नहि पितामहमतिक्रम्य तत्सुतो धनभागिति केनोच्यते भ्रातरस्तत्सुता इत्यभिधाय गोत्रजा इत्यभिदधता याज्ञवल्क्येनैवोच्यते गोत्रजशब्देनैव भ्रातृतत्सुतयो र्निर्द्देशे गम्यमानेऽपि पृथक् तयोरभिधानस्य गोत्रजेषु पितामहादिषु तस्य तस्य सन्ततौ पितृसन्तताविपि च पुत्रपौत्रयोर्धनभागित्वज्ञापनार्थत्वात्। मनुनाप्ययमेवार्थः सूच्यते। यो यो ह्यनन्तरः पिण्डात् तस्य तस्य धनं भवेत्। अत ऊर्द्ध्वं सकुल्याः स्यु राचार्य्यः शिष्यएव वा। तथेति धारेश्वरोव्याचष्टे यो यो ह्यनन्तरः पिण्डादित्यत्र पिण्डात् सपिण्डादित्यर्थो द्रष्टव्यः। कः पुनरवधिभूतः सपिण्डः पिता हरेदित्यभिहितः पितैव पितुरनन्तर स्तत्पिता भवति तत्पुत्रश्च तत्रोभयो र्विद्यमानत्वे कस्यानन्तर्य्यं युक्तं तत्पुत्राणामिति ब्रूमः। कुत एतत् पिता हरेदपुत्रस्य ऋक्थं भ्रातर एव वेत्यत्र एवकारेण पितामहे ऋक्थभागित्वम-सूचनात्। ततश्च वचनादेव तुल्येऽप्यानन्तर्य्ये सन्ततिद्वारमेवानन्तर्य्यमिष्यते। एवञ्च योयो ह्यनन्तरः पिण्डादित्यनेन पितृसन्ततेरभावे पितामहसन्ततिरभिधीयते तस्याभावे प्रपितामहसन्ततिरित्येवमाद्याः सपिण्डा अनुसन्धेयाः।

सपिण्डानामभावेतु सकुल्याः समानोदकाश्च तच्च सकुल्यशब्देनैवोच्यन्ते। तेषा-मप्यासन्नसन्ततेरभावे पूर्व्ववत् विप्रकृष्टसन्ततेरर्थोहरतेति। एवञ्च ये भ्रातृसुतानन्तरं पितामही धनभाक् तदभावे तत्सन्ततिः एवं प्रपितामहादेरपीत्याहुः। ते न्याय-सिद्धक्रमबाधकानन्तरवचनज्ञा न भवन्तीति।

अतायं दायप्राप्तिक्रमः। भ्रातृसुताभावे पितामहसुतस्य दायप्राप्तिः, तस्याभावे तत्सुतस्य, तस्याभावे प्रपितामहसुतस्य, तस्याभावे तत्सुतस्य, तस्याभावे वृद्धप्रपितामहसुतस्य, तस्यतस्याभावे तत्सुतस्य, तस्यतस्याभावे सपिण्डातीतपुरुषसुतस्य, तस्याभावे समानोदकाद्यपुरुषसुतस्य, तस्याभावे तत्सुतस्य, एवमेवोपरितन षट्समानोदकसन्ततावप्यनुसन्धेयं।

तदेतत् सर्व्वमभिसन्धायाह वृहस्पतिः। बहवोज्ञातयो यत्र सकुल्या बान्धवा स्तथा यस्त्वासन्नतरस्तेषां सोऽनपत्यधनं हरेत्। ज्ञातयः सपिण्डा, सकुल्याः समानोदकाः। बान्धवा स्त्वासन्नतरक्रमेणेव मृत्यन्तरे दर्शिताः। आत्मपितृष्वसुः पुत्रा आत्ममातुःष्वसुः सुताः। आत्ममातुलपुत्राश्च विज्ञेया आत्मबान्धवाः। पितुः पितुःष्वसुः पुत्राः पितुर्म्मातुःष्वसुः सुताः पितुर्मातुलपुत्राश्च विज्ञेयाः पितृबान्धवाः। मातुः पितृष्वसुः पुत्राः मातुर्मातृष्वसुः सुताः मातुर्मातुलपुत्राश्च विज्ञेया मातृबान्धवा इति।

ज्ञातिसकुल्यबन्धुषु आसन्नतराभावे यथाकथञ्चिदप्यासन्नतरा मुख्याः। पिण्डगोत्रर्षिसम्बन्धा रिक्थं भजेरन्निति सामान्येन गौतमस्मरणात्। बन्धूनामभावे के रिक्थभाज इत्यपेक्षिते याज्ञवल्क्यः शिष्यः सब्रह्मचारिण इति। धनभाज इति शेषः। उपनीय वेदमध्यापितः शिष्यः। एकाचार्य्यकः सब्रह्मचारी। शिष्योपाध्यायसम्बन्धेन धनसम्बन्धे गुणभूतस्य शिष्यस्य कथनेन प्रधानभूताचार्य्यस्य दण्डापूपन्यायात् बन्धुभावे प्रथमं धनसम्बन्ध इति मत्वाचार्य्यस्यानभिधानमिति मन्तव्यं।

सब्रह्मचार्य्यभावे के धनभाज इत्यपेक्षिते मनुः। सर्व्वेषामप्यभावेऽपि ब्राह्मणा रिक्थभागिनः त्रैविद्याः शुचयो दान्ता स्तदा धर्म्मो न हीयते। अहार्य्यं ब्राह्मणद्रव्यं राज्ञा नित्यमिति स्थितिरिति। उक्तलक्षणब्राह्मणाभावे राजानं प्रत्याह, नारदः ब्राह्मणार्थस्य तन्नाशे दायादश्चेन्न कश्चन ब्राह्मणायैव दातव्यमेनस्वी स्यान्नृपो ऽन्यथा। तन्नाशे अर्थस्वामिनाशे। ब्राह्मणेतरार्थस्य तन्नाशे त्वाह मनुः। इतरेषान्तु वर्णानां सर्व्वाभावे हरेन्नृप इति। जनपदादिपरिपालनादिकर्त्ता नृपः। सर्व्वेषामप्यभावे राजगामि धनमित्यनुवृत्तौ नारदः। अन्यत्र ब्राह्मणात् किन्तु राजा धर्म्मपरायणः तत्स्त्रीणां जीवनं दद्यादेष दायविधिः स्मृतः। तत्स्त्रीणां ब्राह्मणेतरधनस्वामिस्त्रीणां धनभागित्वानर्हाणामित्यर्थः।

सर्व्वेषामप्यभाव इत्यत्र वर्णविशेषनिबन्धनं विशेषमाह संग्रहकारः। पितर्य्यविद्यमानेऽपि धनं तत्पितृसन्ततेः। तस्यामविद्यमानायां तत्पितामहसन्ततेः।

अस्यामपि तस्यान्तु प्रपितामहसन्ततेः। एवमेवोपरीतनाः सपिण्डा धनभागिनः। तदभावे सकुल्याः स्यु राचार्य्यः शिष्यएव वा। सब्रह्मचारी सद्विप्रः पूर्व्वाभावे परः परः। शूद्रस्यैकोदकाभावे राजा धनमवाप्नुयात्। आचार्य्यस्याप्यभावेतु तथा चत्रियवैश्ययोरिति संग्रहकारस्य धारेश्वरमतानुसारित्वात् पितर्य्यविद्यमानेऽपि धनं तत् पितृसन्ततेरित्यभिधानं, अस्मिन् मतेतु पितर्य्यविद्यमानेतु मातुर्धनं तदभावे पितामह्या स्तदभावे तु धनिकपितृसन्तते र्भ्रातृतत्सुतात्मिकाया इत्यनुसन्धेयं।

एवमुक्तमपुत्रधनविषयं सर्व्वं यथायोग्य' अनुपनीतोपकुर्व्वाणक ब्रह्मचारिसमावृत्त गृहस्थाश्रमान्तरवद्भिर्भूत खातकस्वामिविषयं। नैष्ठिकवानप्रस्थयतिधनविषयेतु ग्राहकान्तरश्रवणात्। तथाच याज्ञवल्क्यः। वानप्रस्थयतिब्रह्मचारिणामृक्थ-भागिनः। क्रमेणाचार्य्यसच्छिष्य धर्म्मभ्रात्रेकतीर्थिनः। ब्रह्मचार्य्य'च यति-साहचर्य्यात् नैष्ठिकोऽवगम्यते। धर्म्मभ्राता समानाचार्य्यकः। एकतीर्थी समानशास्त्रक्रमेण पूर्व्वाभावे परः पर इत्यर्थः।

इति स्मृतिचन्द्रिकायां दुहित्रादिविषयाणि।

संसृष्टधनविभागः।

अथ संसृष्टभावादिविषयाणि कानिचिद्वचनानि लिख्यन्ते।

तत्र वृहस्पतिः। विभक्तो यः पुनः पित्रा भ्रात्रा चैकत्र संस्थितः, पितृव्येणाथवा प्रीत्या सवै संसृष्ट उच्यते। यः पुत्रादिः पित्रादिना सह विभक्तः सन्, पुनः प्रीत्यादिनिमित्तेन विभक्तेनेव येन पित्रादिना सह वासमापन्नः स तेन संसृष्ट उच्यत इत्यर्थः।

इदञ्चात्रार्थादवगम्यते। पितृभ्रातृपितृव्यव्यतिरिक्तपितृव्यपुत्रादिना सह संसर्गो न विद्यते इति सहवासे पुरुषाणामाहत्य संसर्गाभावात् धनद्वारेण संसर्गो वाच्य इति तन्निमित्तभूतावच्छेदकापनोदेन विभक्तानां धनादीनां पूर्व्ववदेकराशीकरण-पर्य्यन्तः संसर्गो न पुनः सहवासमात्रमिति मन्तव्यं। अतएव पुनः क्रियमाणधन-विभागमनूद्य तत्र प्रकारविशेषमाह मनुः। विभक्ताः सहजीवन्तो विभजेरन्

पुनर्यदि समस्तत्र विभागः स्यात् ज्यैष्ठं तत्र न विद्यते। सह जीवन्तः सहवासेन जीवन्तः, विभजेरन् संसृष्टधनविभागे समभागविधानादेवसिद्धे ज्यैष्ठनिमित्तक-भागग्रहणे पुनर्ज्यैष्ठनिमित्तकवैषम्यनिषेधः बह्वल्पधनसंसर्गनिमित्तकभागवैषम्या-नुज्ञानार्थः। तेन संसर्गसमये यदीयं यावत् संसृष्टं तदनुसारेण संसृष्टविभागवैषम्यं कल्पनीयं। एतच्च धनस्येदन्तापनोदाय संसर्गो न पुनरियत्तापनोदायेति मन्तव्यं।

अन्यदपि भागवैषम्यं निमित्तान्तरकृतमाह बृहस्पतिः, संसृष्टानान्तु यः कश्चि-द्विद्याशौर्य्यादिनाधिकं। प्राप्नोति तस्य दातव्यो द्व्यंशः शेषाः समांशिनः। अस्मिन् प्राप्ताधिकधने इति शेषः। ससृष्टद्रव्यानुपरोधेनार्जितेऽपि विभाज्यत्व-विधानार्थमेतत्। संसृष्टानां मध्ये पुनर्विभागकरणादर्व्वाक् प्रमीतस्य पुत्रादिसद्भावे प्रमीतपितृकाणान्तु पितृतो भागकल्पनेति विधिना विभागः कर्त्तव्यो विधानान्तर-स्मरणात् पुत्राद्यभावेतु न पत्नीदुहितृन्यायः। तथाच बृहस्पतिः। विभक्ता भ्रातरो येच संप्रीत्यैकत्र संस्थिताः पुनर्विभागकरणे तेषां ज्यैष्ठं न विद्यते। यथा कश्चित् प्रमीयेत प्रव्रजेद्वा कथञ्चन न लुप्यते तस्य भागः सोदरस्य विधीयतइति। यथा प्रथमविभागात् पूर्व्वं प्रमीतस्यापुत्रस्य प्रव्राजितस्य वा भागो लुप्यते विभागाभावेन विभागहेतुकाया इयत्ताया अभावात् तेन सर्व्वं रिक्थं सहवासिनएव तत्र सर्व्वे गृह्णन्ति न तथात्र विभागहेतुकाया इयत्ताया अभावः प्रथमविभागेनैवेयत्तायाः कृतत्वात् नच संसर्गादपैति तस्येदन्तामात्रापनोदकत्वात् तेन सर्व्वं रिक्थं संसृष्टिन एव सर्व्वे गृह्णीयुः किन्तु विभागकाले तद्भागः पृथगुद्धरणीयः सच विभक्तपतिभाग-विषयविवादो न पत्न्याः किन्तु संसृष्टसोदरभ्रातुर्व्वचनेन विधीयते। सोदरस्ये-त्येकवचनमविवक्षितं। अतएव नारदः। भ्रातॄणामप्रजाः प्रेयात् कश्चिच्चेत् प्रव्रजेत् वा विभजेरन् धनं तस्य शेषास्ते स्त्रीधनं विना। शेषाः संसृष्टिनः सोदर-भ्रातरः। संसृष्टिनस्तु संसृष्टी सोदरस्यतु सोदर इति याज्ञवल्क्यस्मरणात्। संसृष्टिनो भ्रातुर्धनं संसृष्टी चाहरेत् न पत्न्यादिः, तत्रापि सोदर एवेत्यर्थः।

एवं तर्ह्यस्य मृतस्य पत्नीनां अप्रत्तदुहितॄणाञ्च का गति रित्यपेक्षितेऽप्याह नारदः। भरणञ्चास्य कुर्व्वीरन् स्त्रीणामाजीवनक्षयात्। रक्षन्ति शय्यां भर्त्तुश्चे-दाच्छिन्द्युरितरासु तत्। या तस्य दुहिता तस्याः पित्र्यंशो भरणे ततः। आसं-स्कारात्हरेद्भागं परतो बिभृयात् पतिरिति। तस्य मृतस्य प्रव्रजितस्य वा या दुहिता तस्याः परिणयनं ततः पूर्व्वं भरणञ्च शेषाएव कुर्व्वीरन्निति द्वितीयश्लोकस्य तात्पर्य्यार्थः प्रत्येतव्यः। यत्र पुनः शेषेषु भ्रातृषु संसृष्टा अपि सोदराः केचित् सन्ति तत्र ये संसृष्टाः सोदरा स्तएव विभजेयुः। संसृष्टानान्तु यो भागस्तेषामेव सद्व्यत

इति प्रस्तुत्य भ्रातॄणामप्रजा इत्याद्युक्तेः। यत्र त्वसंसृष्टाः सर्व्वे सोदरा, भिन्नोदरास्तु संसृष्टा, तत्र सोदरा एवासंसृष्टा अपि तस्य धनं विभजेरन्, नतु भिन्नोदराः संसृष्टाः। असंसृष्ट्यपि चाददात् सोदर्य्योनान्यमातृज इति याज्ञवल्क्यस्मरणात्। असंसृष्ट्यपीत्यपि शब्दात् अन्यमातृजस्य संसृष्टित्वविशिष्टस्यादानप्रतिषेधो गम्यते।

यदातु शेषेषु सोदराभाव स्तदा भिन्नोदराः संसृष्टा विभजेयुः। संसृष्टौ यौ पुनः प्रोत्या तौ परस्परभागिनाविति वृहस्पतिस्मरणात्। अत भिन्नमातृजाविति पौनरुक्त्यपरिहारायावगम्यते। यत्तु याज्ञवल्क्येनोक्तं अन्योदर्य्यस्तु संसृष्टी नान्योदर्य्यो धनं हरेदिति तत् सोदरासद्भावविषयमित्यविरुद्धं।

यद्यसंसृष्टिनामेकोदराणामभावएव संसृष्टिभिन्नोदराणां धनग्रहणं तर्हि, एषां ज्येष्ठः कनिष्ठो वा हीयेतांशप्रदानतः म्रियेतान्यतरोवापि तस्य भागो न लुप्यते सोदर्य्या विभजेरंस्तं समेत्य सहिताः समं, भ्रातरो येच संसृष्टा भगिन्यश्च सनाभय इति मनुवचनविरोधः स्यात्। चशब्दद्वयेन सर्व्वेषां श्लोकोक्तानां सोदरभ्रातृभगिन्यसोदरभ्रातॄणामितरेतरयुक्तानां विभागकर्त्तृत्वावगतेः।

किञ्च ये संसृष्टा भिन्नोदरभ्रातरः तैः सहिताः सोदर्य्याः सनाभयो भगिन्यश्च समेत्य तमलुप्तभागं समं विभजेरन्नित्येवान्वयात् सम्मिलितानामेव कर्त्तृता सहितसमेत्यशब्दाभ्यां सुव्यक्तेति व्यक्तोविरोधः।

केचिद्विरोधपरिहारार्थमिदं वचनमेवं व्याचक्षते। तमलुप्तभागं सोदरा यदि संसृष्टिन स्तदा तएव गृह्णीयु र्नासंसृष्टिनः सोदर्य्या अपि, संसृष्टिनां सोदराणामभावे सर्व्वे सोदराः समेत्य मिलित्वा सहिताः समप्रधानभावेन समन्यूनाधिकं विभजेरन् सोदराणामभावे भगिन्यः सनाभयो विभजेरन् तासामप्यभावे अन्योदर्य्या भ्रातर इति। तदनेकाध्याहारकरणात् अत्यन्तासमञ्जसत्वाच्च उपेक्षणीयं।

अन्ये पुनर्विरोधपरिहारार्थं अन्योदर्य्यस्तु संसृष्टी नान्योदर्य्यो धनं हरेत्, असंसृष्ट्यपि चाददात् संसृष्टो नान्यमातृज इत्येवं याज्ञवल्कीयवचनं पठित्वा तद्वचनं यथा प्रतीयमानवचनसमानार्थतया व्याकुर्व्वते तत्र तावदन्योदर्य्यस्तु संसृष्टी नान्योदर्य्यो धनं हरेत् असंसृष्टीत्येतावतो भागस्याक्षरार्थतात्पर्य्यार्थौ व्याख्यातोऽन्योदर्य्यः सापत्नो यो भ्राता संसृष्टधनं हरेत् न पुनरन्योदर्य्यो धनं हरेदसंसृष्टीत्यनेनान्वयव्यतिरेकाभ्यां अन्योदर्य्यस्य संसृष्टित्वं धनग्रहणे कारणमुक्तं इति। अपिचाददात् संसृष्ट इत्येतावता मध्यभागेन पूर्व्वभागेन सह सम्बन्धः तत्रच पूर्व्वभागान्तःसंसृष्टीतिपूर्व्वभागस्थपदमात्रस्याभिधेयाक्षरार्थसहिततात्पर्य्यार्थौ व्याख्यातः।

असंसृष्टीत्येतदुत्तरेणापि सम्बध्यते ततश्चासंसृष्ट्यपि संसृष्टिनो धनमाददीत, कोसावित्यतश्चाह संसृष्ट इति। संसृष्ट एकोदरसंसृष्ट. सोदर इति यावत्। अनेनासंसृष्टस्यापि सोदरस्य धनग्रहणे सोदरत्वं कारणमुक्तमिति। नान्यमातृज इति भागस्याप्येवकाराध्याहारं कृत्वा तेन सह ।स्वष्ट इति संसृष्टमध्यभागान्तर्गतस्य पदस्याभिधेयाचरार्थो व्याख्यात:।

संसृष्ट इत्युत्तरेणापि सम्बध्यते तत्रच संसृष्टीत्यर्थ: नान्यमातृज इत्यत्रैव शब्दाध्याहारेण व्याख्यानं कार्य्यं संसृष्ट्यपि नान्यमातृज एव सोदरसहित: संसृष्टिनो धनं नाददीतेति कृत्स्नश्लोकस्य तात्पर्य्यार्थो मानववचनसमानार्थतया दर्शित:।

एवञ्च संसृष्ट्यपि चाददयादित्यपिशब्दश्रवणात् संसृष्टी नान्यमातृज एवेत्यवधारणनिषेधात् असंसृष्टसोदरस्य संसृष्टीभिन्नोदरस्यच विभज्य ग्रहणं कर्त्तव्यमित्युक्तं भवति द्वयोरपि धनग्रहणकारणस्यैकैकस्य सद्भावादिति, तदेतदेव व्याख्यातृभ्य स्तेभ्य एव रोचते न पुन: प्रतिवक्तृभ्यो वचनतोऽत्यन्ताप्रतीतस्यैव स्वप्रज्ञावलात् वचनार्थत्वाङ्गीकरणात्।

तस्मादत्र मनुयाज्ञवल्क्यवचनयो र्यथाप्रतीयमानार्थयो र्विषयव्यवस्थयैवाविरोधो न पुनरर्थैक्याभिधानवशादिति, सैवोच्यते। मनुवचनं तावत् स्थावरतदितरधनसद्भावविषयं प्रजापतिना तत्रैव संसृष्टासंसृष्टानां विभज्य ग्रहणाभिधानात् अन्तर्धनञ्च यद्द्रव्यं संसृष्टानाञ्च तद्भवेत् भूमिं गृहं त्वसंसृष्टा विभजेयु र्यथांशत इति। संसृष्टानां भिन्नोदरभ्रातृणां यथांशतो गूढधनं जङ्गमञ्च द्विपदादिरूपं भवेत् असंसृष्टा: सोदरभ्रातृभगिन्यस्तु गृहं चेत्रं यथांशतो गृह्णीयुरित्यर्थ:।

एवञ्च पारिशेष्यात् केवलस्थावरसद्भावविषये केवलस्थावरेतरद्रव्यसद्भावविषये वा याज्ञवल्क्यवचनं द्रष्टव्यं। यदातु शेषभृतसंसृष्टभिन्नोदराभाव स्तदा पिता पितृव्यो वा य: संसृष्टी गृह्णीयात्। संसृष्टिनि प्रेते संसृष्टी ऋक्थभागिति गौतमस्मरणात्। यदा पिता पितृव्य: संसृष्टी न विद्यते तदा त्वसंसृष्टिभिन्नोदरो भ्राता गृह्णीयात् तदभावे त्वसंसृष्ट: पिता, तदभावे माता, तदभावे पत्नी, तथाच शङ्ख:। स्वर्य्यातस्य ह्यपुत्रस्य भ्रातृगामि द्रव्यं तदभावे पितरौ हरेयातां ज्येष्ठा वा पत्नी। स्वर्य्यातस्यापुत्रस्य पितृव्येण पित्रा भ्रात्रा वा संसृष्टस्य संसृष्टाभावे भिन्नोदरासंसृष्टभ्रातृगामि द्रव्यमित्यर्थ:। तथाच नारद:। संसृष्टानान्तु यो भागस्तेषामेव स इष्यते। अतोऽन्यथा नांशभाजो निर्व्वीजेष्वितरानियात्। अतोऽन्यथा संसृष्टेषु सत्सु भिन्नोदरभ्रात्राद्यसंसृष्टिनो नांशभाजः।

यदातु सर्व्वे संसृष्टा निर्व्वीजाः सन्तानरहिताः भवन्ति तदा चेतरान् भिन्नोदरान् भ्रातॄनियात् संसृष्टानां भागं प्राप्नुयादित्यर्थः। तत्रचायं भ्रातृगामि द्रव्यमित्यादि शङ्खवचने क्रमो द्रष्टव्यः। ज्येष्ठाग्रहणं सुसंयतत्वादिगुणवत्याः कथनार्थं न पुनर्मध्यमादिनिवृत्त्यर्थं पुनरपि तदभाव इति वक्तव्ये वाशब्दः प्रयुक्तः फलसाम्यात् तथाहि वाशब्दात् विकल्पोऽवगम्यते। नचात्र स्वाम्यनुरूपवस्तुनि तुल्य बद्विकल्पः सम्भवति, नहि वस्तुनि विकल्पते इति न्यायशास्त्रसिद्धत्वात्। तस्मादत्र वाशब्दादभावविकल्पावगतेः फलसाम्यमस्त्येव।

एवञ्चायं क्रमः। भ्रातभावे पिता हरेत्, तदभावे माता, तदभावे पत्नी। ततश्च विभक्तविषयोक्त पत्नीदुहित्रादिक्रमविरुद्धत्वात् तदविरोधायैतत् संसृष्टांश-विषयमिति कल्प्यते।विभक्तविषयोक्तनैयायिकपत्नीदुहित्रादिक्रमोऽस्मिन् विषये शङ्खोक्तवाचनिकक्रमेण वाध्यते। वाचनिक एवायं क्रमः। अस्मिन् क्रमे कस्य-चिन्न्यायस्याभावात्। अनेन क्रमेण यदा पत्नी भ्रातृपुत्रादयश्च सपिण्डा विद्यन्ते तदाह नारदः। मृते भर्त्तरि भार्य्यास्तु अभ्रातृपितृमातृकाः। सर्व्वे सपिण्डाः स्वधनं विभजेरन् यथांशतः। भार्य्याः पत्न्यः। अभ्रातृपितृमातृका याः पत्युः पितृमातृभ्रातॄणामभावविशिष्टा इत्यर्थः। अनेन द्वन्द्वसमासेन भ्रातृपदस्य अभ्यर्हित-पित्रादिपदस्य पूर्व्वनिपातनं परित्यज्य वैपरीत्येन समासवचनं कुर्व्वता नारदेन संसृष्टापुत्रद्रव्यं प्रथमं भ्रातृपितृमातृगामि तदभावे सर्व्वत्र हृत्तस्यपत्न्याभिगामीति दर्शितं।

एवञ्च संसृष्टविषये पत्नीनां न गौणपुत्राभावे दायहरत्वं किन्तु भिन्नोदरसंसृष्ट-भ्रातृपितृमातृणामभाव इति मन्तव्यं। सर्व्वे सपिण्डा इत्यादेरयमर्थः। संसृष्टा-पुत्रस्य ये भ्रातृपितृमातृव्यतिरिक्ताः सपिण्डा भ्रातुष्पुत्रादय स्ते सर्व्वे स्वधनं पूर्व्वम-प्रत्रधनेन सह स्वपित्रादीनां संसृष्टं तदूर्द्धं तत् पत्नीभिः सह यथांशतो भ्रातृपुत्राणां भ्रातंशः भार्य्याणां भर्त्रंशः इत्येवमंशादिक्रमेण विभजेयुरिति।

पत्नीनामभावे तु संसृष्टापुत्रांशं तद्भगिनी लभेत। तथाच बृहस्पतिः, या तस्य भगिनी सा तु ततोऽंशं लब्धुमर्हति। अनपत्यस्य धर्म्मोऽयमभार्य्यपितृकस्य च। साच दत्ताप्यदत्ता वा सोदरे तु मृते सति। तस्यांशन्तु हरेत् सैव ह्यो व्यक्तं हि कारणं। अभार्य्यपितृकस्य चेति चशब्दार्थः।

भगिन्यभावे केवलाः सपिण्डाः अनन्तरं सपिण्डाद्यस्तस्य तस्य धनं भवेदित्युक्त-क्रमेणैव विभजेरन्निति प्रतिपदोक्तानामभावात्। तथाच सएव मृतो ऽनपत्यो ऽभार्य्यश्चेदभ्रातृपितृमातृकः, सर्व्वे सपिण्डास्तद्दायं विभजेरन् यथांशतः, तद्दायं

संसृष्टिदायं मतीऽनपत्यो भिन्नमातृकाश्च भ्रात्रादिप्रतिपदोक्तधनग्राहिविरहेण स्वेदिति तात्पर्य्यार्थः ।

सपिण्डाभावेतु विभक्तसंस्थितद्रव्यवदेव संसृष्टस्यैतद्रव्यमपि समानोदकादिगामीत्यनुसन्धेयं । संसृष्टद्रव्यमधिकृत्य सपिण्डेभ्य ऊर्द्ध्वं विशेषश्रुतेरभावात् ।

इति स्मृतिचन्द्रिकायां संसृष्टभ्रात्रादिविषयाधि ।

विभक्तजविभाग ।

अथ विभक्तजपुत्रादि विभागः ।

तत्र जीवद्विभागोत्तरकालजातं पुत्रं प्रत्याह विष्णुः । पितृ विभक्ता विभागानन्तरकालोत्पन्नस्य भागं दद्युरिति । अस्यार्थः, अविस्पष्टगर्भायां पितृभार्य्यायां ये पुत्रा विभक्ता स्ते स्वविभागोत्तरकालजातस्य पुत्रस्य तत्सद्भावाज्ञानतः स्वभागप्रविष्टतद्भागांशानुद्धृत्य दद्युरिति पिता तु स्वभागप्रविष्टतद्भागांशं न दद्यात् किन्तु पूर्व्वजै र्दत्तानंशान् गृहीत्वा विभक्तजेन सह वसेत्, तस्याप्राप्तव्यवहारस्य सहवासेन पालनीयत्वात् । अतएव पितृविभक्ता भागं दद्युरित्युक्तं, न पुनः पिता पितृविभक्ताश्च भागं दद्युरिति । यत्तु गौतमेनोक्तं, विभक्तजःपित्र्यमेवेति, भागं गृह्णीयादिति शेषः । तदेतत् पितृविभक्तपुत्रैर्विभक्तजस्य भागदानात् प्रागेव पितरि मृते द्रष्टव्यं । तथाच पूर्व्वजै र्भागो न देयः पित्र्यमेवेत्येवकारकरणात् ।

यत्तु बृहस्पतिनोक्तं, पित्रा सह विभक्ता ये सापत्ना वा सहोदराः, जघन्यजास्तु एतेषां पितृभागहरास्तु त इति । तत्र पितृभागहरा इत्यस्य पितृभागएव भागहरा इत्यर्थोऽवगन्तव्यः । तदेतद्विभागादूर्द्ध्वमेव ये गर्भस्था भूत्वा जातास्तद्विषयं ।

जघन्यजानां पितृभागादेव भागहरत्वे कारणमप्याह सएव । अनीशः पूर्व्वजः पित्रै भ्रातृभागे विभक्तज इति । अनीशः अस्वामी, अनीश' पूर्व्वजः पित्र्य इत्यत्र पित्रा सह विभक्तत्वादित्यभिप्राय' प्रत्येतव्यः । भ्रातृभागे विभक्तज इत्यत्र भ्रातृभागे विभक्तजधनसंक्रमणाभावात् इत्यभिप्रायोऽध्यवसेयः ।

प्रथमोक्ताभिप्रायेण विभक्तजाग्रजानां अनीशतां पित्र्ये प्रसाध्य तद्बलादन्यदप्याह सएव । पुत्रैः सह विभक्तेन पित्रा यत् स्वयमर्जितं विभक्तजस्य तत् सर्व्वमनीशाः पूर्व्वजाः स्मृताः । सर्व्वग्रहणं विभागात् पश्चादर्जिते पित्रे पूर्व्वजसुतानामनहीतांशोऽस्तीति शङ्का निरस्यर्थं ।

एवञ्च पूर्व्वजा तदितरे चान्योऽन्यसम्बन्धिजन्यादस्वामिन: परस्परधने किन्तु ईषदत्र भेदोस्तीत्याह सएव। यथा धने तथाचर्णे दानाधानक्रयेषुच परस्परमनीशा स्ते मुक्त्वा शौचोदकक्रियां। केवलमशौचोदकक्रियादौ परस्परमनीशा न धनादाविव्यर्थ:। आधानं आधि: उक्तं ऋणादानादौ अनीशत्वं संसर्गाभावे सतीत्याह सएव। संसृष्टौ यौ पुन: प्रीत्या तौ परस्परभागिनाविति।

यत् पुनर्मनुनोक्तं। ऊर्द्धं विभागाज्जातस्तु पित्र्यमेव हरेद्धनं संसृष्टास्तेन ये वा स्युर्विभजेत स तै: सहेति। पित्र्यमेवेत्युत्तरार्द्धेऽपि सम्बध्यते अतो न प्राक्तनेन विरुद्धं। तदेतद्विभक्तजेन पितु: सहवासदशायां मृते पितरि द्रष्टव्यं।

अजीवद्विभागोत्तरकालजन्तु पुत्रं प्रत्याह याज्ञवल्क्य:। विभक्ते तु सुतो जात: सवर्णायां विभागभाक्। दृश्याद्वा तद्विभाग: स्यादायव्ययविशोधितात्। पितुऊर्द्ध्वमविस्पष्टगर्भायां पितृभार्य्यायां भातृषु परस्परं विभक्तेषु पश्चात् सुतो यो जात: स विभागभाक्। भाग एव विभागो ऽंश इति यावत्। सर्व्वस्वविभक्तधनादुद्धृतभागभागीति यावत्। यद्वा दृश्यात् दृश्यमानगृहोपस्करवाह्यदोह्याभरणभृत्यादे: सकाशात् एवायव्ययविशोधितादुपचयव्ययाभ्यामवधारितेयत्ताकाद्विभक्तादुद्धृतो भाग स्तस्य विभक्तजस्य स्यादित्यर्थ:। दृश्यग्रहणं गूढद्रव्यजाताद्विभक्तादुद्धृतांशकल्पनानिवृत्त्यर्थं। विभक्तजस्य सुतत्वाविशेषेऽपि विभागकाले दुर्व्विज्ञेयेपि सद्भावशालित्वात् तद्भागे ह्रासकरणं न्याय्यमिति मन्यते न पक्षान्तरयुक्तमिति मन्तव्यं। दुर्व्विज्ञेयसद्भावात्तद्दोषकृतेति प्रथमपक्षोऽपि नात्यन्तानुचित इति मन्तव्यं।

यत्र पुनर्विभक्तागतादौ पुरुषदोषकृताविभागात् पश्चादागम: तत्र विभक्तागतस्य ह्रासपक्षएव न समानभागपक्षान्तरोन्मेष:। अतएव तत्र भागह्रासमेवाह बृहस्पति:। गोत्रसाधारणं त्यक्त्वा योऽन्यदेशं समाश्रित: अर्द्धशस्त्वागतस्यांश: प्रदातव्यो न संशय:। गोत्रसाधारणं त्यक्त्वा सर्व्वसहवासि-निवासदेशमुत्सृज्य योऽत्यन्तदूरदेशनिवासो तस्य सद्भावाज्ञानत: शेषैरेव विभज्य सर्व्वस्मिन् धने गृहीते पश्चादागतस्य तस्यांशो ऽर्द्धशो विभक्तद्रव्यादुद्धृत्य दातव्य इत्यर्थ:। अत्र इतरेषां विभक्तागतसद्भावाज्ञानं तद्दोष इति पक्षान्तरोन्मेष। अतएव न संशय इत्युक्तं।

एवमतिदीर्घकालप्रोषितस्य सद्भावाज्ञानत: कृते विभागे सत्यागतस्येत्याह सएव। ऋणं लेख्यं गृहं चेत्रं यस्य पैतामहं भवेत्। चिरकालप्रोषितोऽपि भागभागागतस्तु स:। भागभाक् अर्द्धभागीत्यर्थ:। आगतोऽपि भागार्द्धमागत:, पौत्रादिस्तु विभक्तागत: क्रमायातद्रव्यभावेंऽशभागीत्याह सएव। तृतीय: पञ्चमश्चैव सप्तमो योऽपि वा भवेत् जन्मनामपरिज्ञाने लभेतांशं क्रमागते।

कस्यचिद्विभक्तागतस्य क्रमागतेष्वपि भूमावंशो देय इत्याह स एव। यं परम्परया मौलाः सामन्ताः स्वामिनं विदुः। तदन्वयस्यागतस्य दातव्या गोत्रजैर्मही। आगतस्य विभागादूर्द्धमिति शेषः। पूर्व्वं विभागादूर्द्धमागतस्य वा स्वभागं यह्लोतु प्रवृत्तस्य दृष्टादृष्टप्रमाणेनादौ तावदात्मनः परायत्ते द्रव्ये स्वाम्यं साधयन् भागग्रहणाधिकारी भवति नान्यथेत्याह स एव। कृते कृते वा विभागे ऋक्थी यत्र प्रवर्त्तते, सामान्यन्वे इमेदयस्तु तत्र भागहरस्तु सः।

इति स्मृतिचन्द्रिकायां विभक्तजपुत्रादि विभागः।

लुप्तविभागः।

अथ लुप्तविभागः।

तत्र मनुः। ऋणे धने च सर्व्वस्मिन् प्रविभक्ते यथाविधि पश्चादृश्येत यत्किञ्चित् तत् सर्व्वं समतां नयेत्। विभागकाले यद्दृश्यते ऋणं वा धनं वा सर्व्वस्मिन् यथाविधि पितृरिक्थहराः पुत्राः सर्व्वएव समांशिनः विद्याकर्म्मयुतस्तेषामधिकं लब्धुमर्हति इत्यादिविज्ञनतिक्रमेण विभक्ते पश्चात् कालान्तरे यत्किञ्चिदृणं प्रोषितोत्तमर्णस्य, यत्किञ्चिद्धनं प्रोषितनिक्षेपधारकादिसमीपस्थं तयोः समागमादिवशात् दृश्यते तत् सर्व्वं समतां नयेत् न पुनर्विद्याकर्म्मयुतेऽधिकधनदानमित्यर्थः, पश्चादृश्येतेति समताभिधानात्। पूर्व्वदृष्टे ऋणे धनेवा विषमतास्तौत्यवगम्यते।

एवं विभागकाले यद्वस्तु येन केनचिदन्यकेन परकीयमिति वुद्धुत्पादनादिना प्रच्छादित विभागोत्तरकाले विचार्य्यमाणे स्वकीयमेवेति ज्ञातं चेत् तत् समतां नयेदित्याह कात्यायनः। प्रच्छादितन्तु यद्येन पुनरासाद्य तत् समं भजेरन् भ्रातृभिः सार्द्धमभावेऽपि हि तत्सुताः। पितुरभावेऽपि सर्व्वे सुता एव तदासादितं विभजेरन्नित्यर्थः।

एवं सहवासिषु केनचित् किञ्चिद्धनमपहृतं कथञ्चिद्विभागादूर्द्धं दृष्टं चेत् समतां नयेत् तथाच याज्ञवल्क्यः। अन्योन्यापहृतं द्रव्यं विभक्ते यत्तु दृश्यते तत् पुनस्ते समैरंशैर्विभजेरन्निति स्थितिः। ते सर्व्वे विभक्ता इत्यर्थः।

अपहृतवत् दुर्व्विभक्तमपि समतां नयेत् तथाच कात्यायनः। अन्योन्यापहृतं द्रव्यं दुर्व्विभक्तञ्च यद्भवेत् पश्चात् प्राप्तं विभज्येत समभागेन तद्भृगुः। दुर्व्विभक्तं शास्त्रोक्तप्रकारान्तरेण विषमतया विभक्तं मिथोऽपहृतंदुर्व्विभक्तवदन्याहृतं नष्टं लब्धञ्च समतां नयेत्।

तथा विभक्तेनार्जितं धनम् अर्जकस्यैव भवति न दायादानामित्याह सएव। विभक्तेनैव यत् प्राप्तं धनं तस्यैव तद्भवेत्। हृतं नष्टञ्च तल्लब्धं प्रागुक्तञ्च पुनर्भजेत्। प्रागुक्तमिति मिथोपहृतं दुर्व्विभक्तञ्च। दृष्टान्तार्थमत्र पुनरुक्तोपादानं एवञ्च प्रागुक्तवद्विभजेदित्यर्थः। तेन परापहृतस्य नष्टलब्धस्य च समसेव विभजनमनेनोक्तमिति मन्तव्यं। एवं मन्वादिभिर्विभागात् पश्चाद्दृश्यमानस्यैव साधारणद्रव्यस्य पुनर्विभागविधानात् पूर्व्वोक्तकृतविभागः सम्यक् जातः इति गम्यते। अनेन विभागादूर्द्ध किञ्चित् सामान्यद्रव्यदर्शनेऽपि पुरुषाणां विभक्तत्वं पूर्व्वमेव सम्पन्नं मन्तव्यं।

यत् पुन र्मनुनोक्तं विभागेतु कृते किञ्चित् सामान्यं यत्र दृश्यते नासौ विभागो विज्ञेयः कर्त्तव्यः पुनरेव हीति। तद्विभक्तैर्विभक्तद्रव्येष्वायव्ययादिकरणात् प्रागेव दृष्टविषये द्रष्टव्यं, अन्यथा पूर्व्वोक्तसर्व्ववचनविरोधापत्तेः। पुनर्विभागविधानस्य प्रयोजनं पश्चाद्दृष्टांशे ऽप्युद्धारादिकरणं।

इति स्मृतिचन्द्रिकायां लुप्तविभागः।

विभक्तकृत्यं।

अथ विभक्तकृत्यं।

तत्र नारदः। यद्येकजाता बहवः पृथग्धर्म्माः पृथक्क्रियाः। पृथक्कार्य्यगुणोपेता न चेत कार्य्येषु सम्मताः। स्वभागान् यदि दद्युस्ते विक्रेतारस्तथापि वा। कुर्य्युर्यथेष्टं तत् सर्व्वमीशास्ते स्वधनस्य वै। अस्यार्थः। एकस्माज्जाता यदि बहवोऽनेके विभक्ता स्तदा पृथक् परस्परानुमतिमन्तरेण धनसाध्याग्निहोत्रादिकर्म्मकारिणः स्यु स्तथैव वित्तव्ययायत्त कृष्यादिलौकिकक्रियाकारिणो भवेयु स्तथापि भिन्नभाण्डादिकर्म्माङ्गद्रव्योपेताः स्युः तथा स्वस्वकार्य्येषु भ्रातरो नचेत् सम्मता स्तदा तानमादृत्य स्वकार्य्यं कुर्य्यु स्तथा ते विभक्ता यदि स्वभागान् विक्रीणीयु र्दद्युरथापि वा तत् सर्व्वं यथेष्टं कुर्य्य स्ततस्ते विभक्ताः स्वधने स्वतन्त्रस्वामिन इति।

यत्तु बृहस्पतिनोक्तं। अविभक्ता विभक्तावा दायादाः स्थावरे समाः। एकोऽप्यनीशः सर्व्वत्र दानाधमनविक्रया इति। आधमनमाधीकरणं। तदेतदयत्र समतया स्थावरविभागमपि दुष्करं मत्वा तत्फलमेव काले ग्रहीष्यामो विभज्येत्यभिसन्धिना तदितरधनविभागतोदायादा विभक्ता भवन्ति तद्विषयं तत्र स्थावरे त्वेकैकस्य स्वतन्त्रस्वामित्वाभावात्।

विभक्तस्य कृत्यान्तरमप्याह सएव। येनांशो यादृशो भुक्त स्तस्य तत्र विभावयेदिति। तथाच राजानं प्रत्याह सएव। स्वेच्छाकृतविभागो यः पुनरेव विसम्वदेत् सचराज्ञांशके स्थाप्यः शासनीयो ऽनुबन्धकृत्। अनुबन्धो निर्बन्धः आग्रह इति यावत्।

इति स्मृतिचन्द्रिकायां विभक्तकृत्यं।

विभागसन्देहे निर्णयः।

अथ विभागधर्म्मसद्भावनिर्णयहेतवः।

तत्र याज्ञवल्क्यः विभागनिह्नवे ज्ञातिबन्धुसाक्ष्यभिलेखितैः। विभागभावना ज्ञेया गृहक्षेत्रैश्च यौतकैः। यौतकैः पृथक्कृतैः। विभागग्रहणं तद्धर्म्माणां प्रदर्शनार्थं। अतएव नारदः। विभागधर्म्मसन्देहे दायादानां विनिर्णयः। ज्ञातिभिर्भागलेख्येन पृथक् कार्य्यप्रवर्त्तनात्। नास्मोदावयोर्विभाग इति स्वरूपापलापादिना, सर्व्वस्मादविभाज्यात् नावयोर्विभाग इति धर्म्मापलापादिना वा तद्धर्म्मसद्भावसन्देहे दायादानां ज्ञात्यादिसाक्षिभिर्विभागलेख्येन वा पृथक्कार्य्यप्रवर्त्तनादियुक्तिभिर्निर्णयो ज्ञेयः, पृथक् कार्य्यप्रवर्त्तनं पृथक् पृथक् वैश्वदेवभिक्षादानातिथिपूजादि धर्म्मप्रवर्त्तनं, कथं तस्य युक्तमित्यपेक्षिते अनन्तरमुक्तं तेनैव। भ्रातॄणामविभक्तानामेको धर्म्मः प्रवर्त्तते। विभागे सति धर्म्मोऽपि भवेत्तेषां पृथक् पृथक्। धर्म्मो वैश्वदेवादिः। तथाच बृहस्पतिः। एकपाकेन वसतां पितृदेवद्विजार्च्चनं एकं भवेद्विभक्तानां तदेव स्याद्गृहे गृहे। एवञ्च पृथक् वैश्वदेवादिप्रवर्त्तनमविभक्तेष्वविद्यमानं विभक्तत्वमवगमयेदिति भागसन्देहनिर्णायकयुक्तितयोक्ति युक्तेत्यनवद्यं।

युक्त्यन्तराणि वक्तुं परस्परसाक्षित्वादिकं तावद्विभक्तानां विधास्यन् तत् प्रतिषेधमविभक्तेषु सएवाह। साक्षित्वं प्रातिभाव्यञ्च दानं ग्रहणमेवच। विभक्ता भ्रातरः कुर्य्यु र्नाविभक्ताः परस्परं। ग्रहणं प्रतिग्रहः। एवञ्च परस्परसाक्षित्वादियुक्तिभ्यो विभागसद्भावावगतिः सिद्धत्येव। अतएवानन्तरमुक्तं तेनैव एषामेताः क्रिया लोके प्रवर्त्तन्ते स्वरिक्थिषु विभक्तानवगच्छेयु र्लेख्यमप्यन्तरेण तां। प्रवर्त्तन्ते व्यस्ताः समस्ता वेति शेषः।

एव ऋणग्रहणमपि ऋक्थिषु प्रवर्त्तमानं विभक्तत्वावगमकं अविभक्तेष्वप्रवर्त्तनात्। तथाच याज्ञवल्क्यः। भ्रातॄणामथ दम्पत्योः पितुः पुत्रस्य चैवहि। प्रातिभाव्य-

ऋणं साक्ष्यमविभक्ते नतु स्मृतं। ततश्च ऋणदातुरपि ऋणग्रहीतृसकाशाद्वि-भक्तत्वंसिद्धं। अतएव बृहस्पतिः। पृथगायव्ययधनाः कुसीदञ्च परस्परं। वणिक्-पथञ्च ये कुर्युर्विभक्तास्ते न संशयः। कुसीदं वृद्ध्यर्थं धनप्रयोगः। वणिक्पथो वाणिज्यं। परस्परमित्युभयत्र सम्बध्यते एवं हेतुतो निर्णयः।

तत्र शेषनिर्णायकप्रमाणाभावे कार्य्यं इत्याह स एव। साहसं स्थावरस्वाम्यं प्राग्विभागश्च रिक्थिनां। अनुमानेन विज्ञेयं न स्युर्यत्र च साक्षिणः। प्राग्विभागो विभागविवादात् प्राक्कृतो विभागः। अनुमानं युक्ति साहसादि।

युक्तिप्रदर्शनार्थं कांश्चित् साधकानाह स एव। कुलानुबन्धव्याघातहार्द्दं साहससाधकं स्वस्य भोगः स्थावरस्य विभागस्य पृथक् पृथक्। कुलानुबन्धः पूर्व्वपुरुषवैरानुबन्धः. व्याघातः परस्परस्य, हार्द्दं बलादपहृतलोप्त्रदर्शनं। स्वस्य भोग आत्मनो भोगः। अत्र कात्यायनः। वसेयुर्दशवर्षाणि पृथक् धर्म्माः पृथक्क्रियाः। भ्रातरस्तेऽपि विज्ञेया विभक्ताः पैतृकाद्धनात्। भ्रातृशब्दश्च ऋक्थसम्बन्ध्युपलक्षणार्थः। पैतृकग्रहणं, दायधनोपलक्षणार्थं। परमार्थतो दाय-ग्रहणाभावेऽपि पश्यतो ऽब्रुवतो भूमेर्हानिर्विंशतिवार्षिकी। परेण भुज्यमानस्य धनस्य दशवार्षिकीतिच, फलानुसारेण विभक्ता एवेति ज्ञातव्या इत्यर्थः। दशवर्षा-दर्व्वाक् पुनःप्रागुक्तयुक्तिभिरेव निर्णयः।

तथा सामान्यसिद्धिसम्भावनया निर्णयाभावयुक्तिष्वपि असमर्थासु शपथैरेव सम्भवेदिति वचनात् यद्यपि शपथप्राप्तिः तथापि शपथेन निर्णयो न कार्य्यः। यत आह वृद्धयाज्ञवल्क्यः। विभागधर्म्मसन्देहे बन्धुसाक्ष्यभिलेखनैर्विभागभावना कार्य्या न भवेद्दैविकी क्रियेति।

कथं तर्हि युक्तिष्वसमर्थासु निर्णय इत्यपेक्षिते मनुः। विभागे यत्र सन्देहो दायादानां परस्परं पुनर्विभागः कर्त्तव्यः पृथक् स्थानस्थितैरपि, यत्र सन्देहो युक्तिभिरसमर्थाभिर्नापैतीति शेषः।

यत् पुनस्तेनैवोक्तं सकृदंशो निपतति सकृत् कन्या प्रदीयते सकृदाह ददानीति त्रीण्येतानि सकृत् सकृत्। एतद्युक्त्यादिभिरपगतसन्देहविषयमिति सर्व्वमनवद्यं।

इति स्मृतिचन्द्रिकायां विभागसद्भावधर्म्मस्तवः।

समाप्ताश्च दायविभागाख्यस्य विधिवितानाः।

THE KALPATARU.*

PARTITION OF HERITAGE.

CHAPTER I.

SECTION I.

TIME OF PARTITION AND RIGHTS OF FATHER AND SON

Partition should take place after the death of the parents, when father is faultless.

1. On the above matter Narada says; "where a partition of the paternal property is instituted by the sons, it is called by the learned, partition of property, a title law." Manu says: "After the death of the father and of the mother, the brothers being assembled may divide among themselves in equal shares, the paternal estate for they have no power over it while the parents live." Devala says: "After the death of the father, sons should divide his wealth. As long as the faultless father is alive, they have no right." 'Faultless' here means without faults like being an outcast. Narada says: "The father being dead, the sons shall divide the estate as they ought; (and so shall) daughters (divide the property) of their mother (when she dies); or failing daughters, their issue." Sankha Likhita says: "Though there be property subsequently acquired, they have no power (to make partition) since they have no independent power in respect of wealth and religious duties." 'Subsequently acquired' here means subsequently acquired by capable sons by learning and the like without using the paternal wealth.

The right of the eldest to be the manager. If he be incapable, a capable younger may be manager.

2. Manu says: " Or the eldest alone may take the whole paternal estate, the others shall live under him, just as they lived under their father. Immediately on the birth of his firstborn a man is called the father of a son and is freed from the debts to the Manes; that son therefore is worthy to receive the whole estate. The son on whom he throws his debt and through whom he obtains immortality is begotten for the fulfilment of the law; all the rest they consider as the offspring of lust. As a father supports his sons so let the eldest support his younger brothers, and let them also in accordance with the law behave towards their eldest brother as sons. The eldest increases the prosperity of the family or destroys it. The eldest should be respected above all in this world. The eldest is not blamed by the good. The eldest who conducts himself

* The full name of the book is Kritya Kalpataru.

properly as the eldest should, is like the mother and like the father. He who does not properly conduct himself as the eldest, should only be respectfully regarded as a kinsman. The eldest shall not make any thing his separate property without giving (an equivalent) to his younger brothers." *Yautaka* means separate property such as cows. Narada says: "Or the eldest shall maintain all (the junior brothers) like a father, if they wish it, or even the youngest brother if able; the wellbeing of a family depends on the ability (of its head)."

In grandpaternal property father ...

3. Viihaspati says: "Of property acquired by the grandfather, whether immoveable or moveable, father and son are declared to be equal sharers. In grandpaternal property once lost and afterwards recovered by the father, in self-acquired property and in what is acquired by learning or valour, the father's power of disposal is declared. He can make a gift of it or enjoy it at his pleasure. After his death however, the sons take it in equal shares."

Partition duringfathers' life time.

4. On the mode of partition at the instance of the sons, Narada says: "(the division of the property may take place) when the mother has ceased to menstruate and the sisters are married or when the father's sexual desire is extinguished and he has ceased to care for wordly affairs." *Nibritta ramone* means when the power of sexual enjoyment is lost. Vrihaspati says "After the death of both parents, division of property among brothers has been ordained. It may take place, even in their lifetime, if the mother be past child-bearing" Sankha Likhita says: "when the father is living, partition of wealth, may take place, if allowed by him, either publicly or privately according to what is right." Harita says: "the father when living may distribute (the whole property amongst the sons) and retire to a forest or enter the order of old age; or he may distribute a small portion and continue to live in his house reserving the larger portion for himself. Should he lose, he may take back from them and to such as become indigent, he may give a portion." *Upadasyet* in the text means loses. Vishnu says: "If a father makes a partition, he may dispose of his self-acquired property at his pleasure." Yajnavalkya says: "A father when making partition can divide the estate among his sons as he pleases either giving to the eldest the best share or in such wise that all share equally. If he give equal shares, such of his wives as have not received Stridhana from their husband or father-in-law shall also equally share." Narada says: "Two shares let the father keep for himself when distributing his property." On the subject of the father's right, Sankha Likhita says: "If there be only one son, the father will take

two shares." In the commentary on the text, the word 'son' does not appear* and it says that 'if he be one.'

Now follow texts about the preferential share of the eldest which are omitted as unimportant.

CHAPTER I.

SECTION II.

MODE OF PARTITION

Equal partition among members up to the great-grandson, *per stirpes*.

1. Yajnavalkya says: "After the decease of the parents let the sons make equal division of the property and of the debts." And also: "If however, the common property be augmented, equal division is enjoined. In making division among several grandsons regard should be had to the respective fathers" The meaning is that when the common property is augmented by agriculture and the like there the division should be equal and no regard should be had of the fact that a larger acquisition was made by any one of the coparcener. The words 'Anekpitrinam' &c., mean that when there are unequal numbers of sons of several brothers, the sons take the shares of their respective fathers and not equally *per capita*. Vrihaspati says: "These sons have all received happiness from me and therefore they are equal sharers. Their sons of equal and unequal number are declared as taking the shares of their respective father." Katyayana says: "When the undivided younger brother dies, his son shall be made sharer of the heritage, if he has not received maintenance from the grandfather. He shall get his paternal share, either from the paternal uncle or his son. But the very same share should equitably belong to all the brothers, or his son shall get it. After him there is a cessation of right" Devala says: "Of the members of the same family, divided or undivided, living together, there should be partition of the heritage among the descendants up to the fourth degree. This is settled. Up to that degree, the members of the family are of the same body. After that there is difference of body. Sages desire that there should be separation in body and in wealth at the same time. This is the rule when there are many members of the same caste. When there is only one (son) of the same caste, the heritage is not divided."

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* It thus appears that Lakshmidhara had before him a Commentary on the Sankha Likhita and thus a complete code of Sankha Likhita, which is now lost.

Pregnant widows should be allotted shares. If sons born they take them, otherwise the surviving brothers, the widows getting ...

2. With reference to undivided members, Vasista says: "Now follow the rules regarding partition of the estate among brothers. And (let it be delayed) until those widows, who have no offspring, bear sons." 'Widows' (in the text) means widows of the deceased brothers. 'Until they bear sons' means that those who are pregnant, should be allotted shares. If no son is born, this share should go to the surviving brothers and the widows should only get maintenance.

Mothers, step-mothers and grandmothers take equal shares and sisters one-fourth shares for their marriage.

3. Yajnavalkya says: "If partition be made after the father's death, the mother shall also have an equal share." Premising the father, Vrihaspati says: "But on his death, the mother shall take a son's share The (step) mothers shall share equally with them; the maiden (daughters) shall take one-fourth shares." 'Fourth share' (in the text) means that the fourth share with reference to the share of the sons of the same caste (with the daughters) should be allotted to the daughters in the patrimony for the purpose of their marriage. Vishnu says: "Mothers shall receive shares proportionate to their sons' shares; and so shall daughters." This text refers to the right of the daughters to one-fourth share from the abovementioned text Vyasa says: "But the sonless wives of the father are declared equal sharers; and all the grandmothers also are declared equal to mothers."

Vicious brothers are excluded.

4. Vrihaspati says: "All the sons take the father's estate in due shares. Among them he who is learned and virtuous is deserving of a larger share. Among the sons, he who is not celebrated for learning, valour, worldly affairs, wisdom, charity and religious works, does not take the paternal wealth."

Narada says: "One who being authorized to look after the affairs of the family charges himself with the management (of the family property) shall be supported by his brothers with food, clothing and vehicles."

Manu says: "He who though able does not make an effort to acquire wealth, should be separated by giving from their own shares something for his maintenance."

Apastamba says: "All who are virtuous are sharers. But him who expends money unrighteously he (the father) shall disinherit though he be the eldest son." 'Expends unrighteously' means spends in gambling and the like.

CHAPTER II.

ON DISQUALIFIED HEIRS.

1. On this subject, Gautama says: "According to some, the son of a woman of equal caste even does not inherit, if he be living unrighteously." Manu says: "All brothers who habitually commit forbidden acts are unworthy of the share of the property." Sankha Likhita says: "Of one who is excommunicated, the heritage, the oblation of food and libation of water cease." Vrihaspati says: "Though born of a wife of the same caste, a son destitute of good qualities is unworthy to obtain the paternal wealth. The son delivers the father from debts to superior and inferior beings; a son who cannot fulfil this duty is of no use. Of what use is having a cow which neither gives milk nor bears calves. For what purpose is a son who is neither learned nor virtuous. A son wanting learning, courage and good purpose and devoid of austerity and wisdom and wanting in good conduct is urine and excrement" Vicious sons excluded.

2. Manu says: "Eunuch and outcasts, born blind or deaf, the insane, idiots and the dumb as well as those deficient in any organ of (action or sensation) receive no share. But it is just that a man who knows the law should give even to all of them food and raiment according to ability for life; he, who does not give it, becomes an outcast. If those beginning with the eunuch should somehow or other desire to take wives, the offspring of such among them as have children is worthy of a share." 'Deficient' in an organ means the lame and the like. 'Those beginning with the eunuch' is a word in the Atadgung Bahubrihi Samasa form and thus means all the rest excepting the eunuch. Eunuchs blind, deaf excluded.

3. Yajnavalkya says: "The outcast and his son, the eunuch, the lame, the insane, the idiot, the blind, the incurably diseased and the like must be maintained being excluded from inheritance. Their sons, legitimate or Kshetraja, are entitled to allotments if free from similar defects. Their daughters must be maintained likewise, until they are made over to husbands." The sons of excluded heirs inherit if free from defect; the daughters have to be maintained.

4. Narada says: "One hostile to his father or outcast or impotent or excommunicated for grave offence shall not even take a share of the inheritance, if he is a legitimate son; much less so if he is Kshetraja son." *Apapatrita* means one excommunicated whose water would not be touched by kinsmen, for offences like the murder of the King.

5. Devala says: "When the father is dead, an impotent person, a leper, a madman, an idiot, a blind man, an outcast, the offspring of an outcast and a hypocrite wearing the token of a religious mendicant are not entitled to a share of the heritage. Food and raiment should be given to them, excepting the outcast. The sons of such persons, being free from similar defect shall obtain their father's share of the heritage." The words 'when the father is dead' is connected with 'the impotent and the like are not entitled to a share of the heritage'

6. Vishnu says "Outcasts, eunuchs, persons incurably diseased or deficient in an organ do not receive a share. They should be maintained by those who take the inheritance. And their legitimate sons receive a share. But not the children of an outcast, provided they were born after the commission of the act on account of which the parents were outcasted. Neither do children begotten by husbands of an inferior caste on women of a higher caste receive a share. Their sons do not even receive a share of the wealth of their paternal grandfathers. They should be supported by the heirs."

Sons by wives of the same Gotra or of different caste entitled to maintenance.

7. Gautama says · "An idiot, and an eunuch must be supported. The male offspring of an idiot receives his father's share. The son born of a wife of a superior caste must be treated like the Sudraputra or the son of a Sudra wife. The Sudraputra receives maintenance from the childless man, if he serves like a disciple." As the Sudraputra receives only maintenance, so does the son of a wife of a superior caste. This is the meaning. Katyayana says: "The son of a woman married in an irregular order and one born of a wife of the same Gotra, as well as an apostate from a religious order are unworthy of the inheritance. The son of one married in irregular order when not of the same caste with the father, *i.e.*, he who is born of a wife of a different caste in irregular order, or one who is born of a wife of a superior caste is not entitled to the inheritance. He should be given maintenance for life by the kinsmen. On failure of kinsmen he obtains the paternal wealth. When there is no paternal wealth, the kinsmen should not be compelled to pay (for his maintenance.)" One born of a wife of a different caste in irregular order is not entitled to the inheritance. Thus a son born in a regular order of one of the same caste is entitled to the inheritance. 'Swagotra' means one born of a wife of the same Gotra.

CHAPTER III.
ON PARTIBLE WEALTH.

On partible wealth: On this subject Katyayana says: "Whatever is inherited from the grandfather or from the father or is self-acquired, all that should be divided on a partition among heirs. But having paid the debts and given affectionate gifts (promised by the father) out of the heritage, the residue should be received by their issue in (their) order up to the fourth." Up to the fourth *i.e.* person. Narada says: "What is left of the father's property, when the father's obligations have been discharged and when the father's debts have been paid, shall be divided by the brothers in order that the father may not continue a debtor." Katyayana says: "All debts incurred for the purposes of the family by a brother or a paternal uncle or the mother must be paid by the co-heirs at the time of partition. That debt shall be paid to the creditor when after contest the same is established by evidence; otherwise they shall not be compelled to pay. The paternal debt, the debt incurred by a relative (for the family) and a debt incurred by a member himself (for the family): such debts are payable jointly by the co-heirs at the partition. Whatever is given for a religious purpose or through affection, and whatever debt is due to a member, the same shall be divided when known; there can be no gift from the patrimony Whatever is known, houses, fields and quadrupeds should be divided. If concealment of property is suspected, then discovery (by ordeal) is prescribed. Household furniture, beasts of burden, milch cows, ornaments and workmen, that are visible shall be divided; and in case of property being concealed Manu ordains the Kosha or an ordeal by drinking water in which an idol has been washed." The meaning of 'that debt to the creditor &c.' is that at the time of partition, if incurred after dispute with one another, if it is proved by evidence should be paid and not otherwise. All the debts of the father, all debts incurred for paying off the debts of the father, the debt incurred by a member of the family for the purposes of the family, the debt incurred by one-self for the family (should be divided.) "Whatever is given for a religious purpose or through &c." means whatever common property is given for religious purposes or through affection, whatever debt is given as a creditor and is not known to others, should be divided. It is not right to make a gift of the undivided common paternal property.

The section on impartible wealth is omitted as it merely cites the texts, which are all to be found in Vol. I, without any comment.

CHAPTER IV.

SECTION I.

ON STRIDHANA IN GENERAL.

Woman's duty in respect to joint property.

1. Manu says: "A woman should not appropriate to herself property (or ornaments and the like) out of the property belonging to many joint coparceners, nor even out of (the husband's) own wealth without his consent." *Nirhara* in the text means appropriate by taking out of. *Kutumba* means the wealth of coparceners acquired with their mutual help. 'Own wealth' means her husband's wealth which is not common to all.

Stridhana defined.

2. Manu and Vishnu say: "The ornaments which may have been worn by women during their husband's time, his heirs shall not divide. Those who divide them become outcasts" Apastamba says: "According to some, the share of the wife consists of her ornaments and the wealth (which she may have received) from her relations." Narada says: "What has been given to a wife by her loving husband, that she may spend or give away as she likes, after his death even, excepting immoveables." Vyasa says: "Property to the extent of two thousand *Panas* should be given to the wife. Such property also as is given by her husband, she may enjoy according to her pleasure."

Saudayika defined.

3. Katyayana says: "By a married woman or by a maiden, whatever is received from the husband's or father's house, from the brothers or from the parents is call Saudayika. The independence of women who have received Saudayika gifts is recognized in such property; for it is given by their kindred for their support in order to avoid sin. The power of women over Saudayika property is declared both in respect to sale and gift according to their pleasure, even in the case of immoveables. The husband's *daya* (*i e*, heritage or gift) a woman may deal with according to her pleasure, when the husband is dead, but when he is alive, she shall carefully preserve it; or if she is unable to do the same, she shall commit it to the care of his kindred. A sonless widow keeping unsullied the bed of her lord and living with her Gurus, shall being moderate enjoy until her death, afterwards the heirs shall take." (In the text) the word 'husband' is connected with the word house. Brother and parents in the above are symbolical of other relations. Property received from other relations of her own mother's or father's family is also Saudayika.

Power over immoveable property.

4. In such property even when it is immoveable, women have independent power of gift, sale and the like. In property given by the husband also, except when it is

immoveable, they have full power to make a gift and the like as they please. Narada says: "What has been given to a wife by her loving husband, that she may spend or give away as she likes, after his death even, excepting immoveables."

5. Manu after premising that the King should protect the estate, says: "There should be protection of barren sonless women whose family members are dead and of chaste women who are widows and helpless. The kinsmen who despoil the wealth of these women when they are alive should be punished with the punishment of thieves by a virtuous King." Basa means barren. Sonless means whose sons are dead. 'Whose family members are dead' means who has got no one in her mother or father's family.

Stridhana should not be taken by the coparceners.

6. Devala says: "Property given for her maintenance, ornaments, property given to the bride by the husband for marriage and wealth gained from kinsmen are declared Stridhana. She herself exclusively enjoys it. Her husband has no right to use it except in distress. When Stridhana is needlessly wasted or enjoyed by the husband, he should return to the wife with interest. He has power to appropriate Stridhana for the relief of a son." Katyayana says: "Neither the husband nor the son nor the father nor brothers can assume power over a woman's property to take it or dispose of it. If any of these persons by force consume the woman's property, he shall be compelled to make it good with interest and shall be punished. If it is consumed with permission given out of affection, the principal only should be returned. Whatever she out of affection puts into the hands of her husband afflicted by disease, suffering distress or sorely pressed by creditors, he shall repay it at pleasure."

Woman's power over Stridhana.

7. Yajnavalkya says: "A husband is not liable to make good the property of his wife taken by him, in a famine, for the performance of religious duties, during illness or while under distraint."

8. Katyayana says: "If (the husband) has got two wives and does not love her, he should be compelled to return her property though she might have given it to him out of affection. If food, raiment and residence be withheld from women, they may exact their own (Stridhana) and may likewise take a share from the heirs. This is the law laid down by Likhita. When she has got them, she shall live in the husband's family. But if she be afflicted with disease and in danger of life, she may remove to her father's family. When a woman is addicted to evil actions, is shameless or wastes property or is unchaste, she does not deserve Stridhana. Wealth is made for sacrifice. There-

Woman's right in case of second marriage or when maintenance is refused.

fore it should be appropriated to fit and virtuous persons and not to women, ignorant or irreligious men or infidels. The Stridhana promised by the husband should be paid by the sons as a debt (of his), if she lives with the family of her husband and not if she lives in the family of her father."

CHAPTER IV.

SECTION II.

SUCCESSION TO STRIDHANA OF A WOMAN HAVING CHILDREN.

Manu's text on the subject explained.

1. Manu: "But when the mother has died, all the uterine brothers and the sisters shall equally divide the mother's estate.

Even to the daughters of those daughters something should be given as is seemly out of the estate of their maternal grandmother out of affection.

(Such property) as well as gift subsequent and what was given to her by her husband out of affection, shall go to her offspring, even if she dies in the lifetime of her husband."

In the above text the word *Sanabhaya* means uterine. 'As is seemly' means according as the property is much or little. *Anvadheya* means property obtained after marriage from the husband's or father's family.

2. Vrihaspati says: "Stridhana goes to the children and the daughter, if not married, has a share in it. If she is married, she shall receive something as a token of respect only."

Yautaka defined.

3. Manu says: "But whatever may be the Yautaka property of the mother, that is the share of the unmarried daughter alone." Yautaka means the property given to women at the time of marriage by their father and the like.

Gautama's text about preferential right of unprovided daughter explained.

4. Gautama says: "Stridhana goes to unmarried daughters and to unprovided daughters." Here 'unprovided' means married but having poor husbands or widowed or childless.

Vasista says: "Let the daughters divide their mother's *Parinahya*. *Parinahya i.e.*, dress, mirror, &c., the daughter and the like should obtain. (This is the meaning.)

Yajnavalkya's rule.

5. Yajnavalkya after premising 'after death' says: The daughters take the residue of their mother's property after payment of her debts. In their default their issue." 'Issue' here means son and the like. (This is so even) their marriage has been performed. Vishnu says: "If she dies leaving children, her wealth goes in every case to her daughter."

6. Manu says: "Whatever property may have been given by her father to a wife, that the daughter of the Brahmini wife shall take or her issue." The meaning is that the property given by the father of women having no husband or children, the Brahmini daughter of the co-wife takes and her issue.

7. Katyayana says: "On failure of daughters, the heritage goes to the sons. But what had been given, by Bandhus belongs to Bandhus, in their default it goes to the husband. Sisters having husbands shall share with the Bandhavas. This is the settled rule of partition of woman's property."

Succession to property given by Bandhus and sister's right.

CHAPTER IV.

SECTION III.

SUCCESSION TO THE WEALTH OF A CHILDLESS WOMAN.

1. Manu says: "It is ordained that the property of a woman married according to the Brahma, the Daiva, the Arsha, the Gandharva or the Prajapatya rite shall belong to her husband alone, if she dies without issue." Devala says: "The property of a woman on her death is taken in common by her sons and maiden daughters; in default of issue, the husband, the mother, the brother or the father shall take."

2. Gautama says: "The sister's fee belongs to her uterine brothers, if her mother be dead; some say, even while the mother lives." The meaning is that in case of women married in forms beginning with the Asura, the sister's wealth is taken by the uterine brothers on the death of the mother also.

3. Yajnavalka says: "That which has been given to her by her kindred as well as her fee or gratuity and any thing bestowed after marriage, her kinsmen take it, if she die without issue."

4. Manu says: "But if an appointed daughter dies without leaving a son, the husband of the appointed daughter may without hesitation take that estate." Paithnashi says: "The husband is not entitled to the effects of an appointed daughter. If she dies sonless or a maiden, it is taken by her sister."

5. Yajnavalkya says: "When a father after having betrothed a daughter marries her to another, he should be punished and compelled to pay the expenses with interest.

If she dies (before marriage) the husband shall take back what he had given after deducting the expenses of both parties." The meaning is that the father himself having promised in marriage, if he retracts *i.e.*, retracts without just cause, he should be punished, and should return with interest gold and the like given by the bridegroom. This is an injunction to the giver of the daughter. Again if somehow, the betrothed girl dies, all that had been given before (by the bridegroom) to the deceased, he should take back, after deducting the expenses of both parties after taking into account what had been spent by the girl's father for entertaining the relatives and for their good, &c.

Gautama says after premising 'does not deserve': "The Sulka is taken by the husband." Badhayana says: "The heritage of a deceased maiden her uterine brothers shall take; failing them, it belongs to the mother, failing her, to the father."

Vrihaspati says: "The mother's sister, the wife of a maternal uncle, a paternal uncle's wife, a father's sister, a mother-in-law and an elder brother's wife are declared to be equal to a mother. If they have no legitimate son of the body, nor other son, nor daughter's son, nor their son, the heirs beginning with the sister's son shall inherit their property."

CHAPTER IV.

SECTION IV.

DEFINITION OF STRIDHANA.

1. Manu and Katyayana say: "What was given before the nuptial fire, what was given on the bridal procession, what was given in token of love and what was received from her brother, mother or father, that is called the sixfold property of a woman." Narada says: "What was given before the nuptial fire, what was given during the bridal procession, the husband's donation, what was received from the brother or from the two parents, that is called the sixfold property of a woman." Vishnu says: "What has been given to a woman by her father, mother, sons or brothers, what she has received before the nuptial fire, what she has received on supersession, what has been given to her by her relatives, her fee and a gift subsequent are called woman's property."

2. Devala says: "Property given for maintenance, ornaments, property given to the bride by the husband for marriage, and wealth gained from kinsmen are declared Stridhana."

3. Katyayana says: "Whatever wealth is gained by the practice of mechanical arts and what is received through affection from a stranger, therein the ownership of the husband always exists; but the rest is woman's property. Whatever is given to women at the time of their marriage, before the sacred fire, is denominated by sages the property given before the nuptial fire. What a woman receives while she is carried from her paternal abode to the house of her husband is called the property of a woman given at the bridal procession, whatever is given through affection by the mother-in-law or by the father-in-law on the occasion of her salutation by touching the feet is called gains of amability. Whatever is received by a woman after marriage from her husband's family or from her own family is called gift subsequent. Whatever is received by a woman through affection from the husband or the parents is gift subsequent according to Bhrigu. Whatever is received as price (or bribe) by women (for sending their husband to work) on houses, on furniture, on carriages, on milking utensils and on ornaments is called Sulka."

CHAPTER V.

ON THE DIVISION CONCEALED JOINT PROPERTY.

1. Manu says: "If after all the debts and assets have been duly distributed according to law, any property be afterwards discovered, one must divide it equally." Katyayana says: "Whatever is concealed by any one and is afterwards discovered the sons should after the death of the father divide with their brethren in equal shares. Bhrigu says what was misappropriated by one another and what was not property divided but is subsequently discovered shall be divided in equal shares. Whatever is acquired by a separated coparcener shall belong to him alone; but whatever was stolen or lost and property mentioned in the preceding texts shall be divided afresh. Whatever effect has been stolen by a kinsman shall not be recovered by force: undivided kinsmen shall not be compelled to pay compensation for enjoyment." Vrihaspati says: "In case of concealment of a debt or deposit belonging to the joint family, artifice should be employed and it should be discovered by indirect means and then all should be made known. When men who hold property are dishonest, wicked and avaricious, they should be dealt with by gentle means of through some contrivance or deprivation of interest."

CHAPTER VI.

ON SONS BY WIVES OF DIFFERENT CASTES.

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Rights of Dasi putra or illegitimate son.

1. Manu says: "A son of Sudra who is begotten on a Dasi or on the Dasi of a Das, if permitted by his father takes a share of the inheritance: thus the law of inheritance is settled." (In this text) Dasi means the maid servant in the house of a Das (or slave or Sudra).

2. Yajnavalkya says: "Even the son begotten by a Sudra on a Dasi shall have such share as the father may allot. But if there be no partition till after the father's death, then the brothers are to assign him half a share; if there be no brothers nor brother's sons, he takes the whole."

The rest of the Chapter is omitted as unimportant and as it merely cites without comments texts most of which are to be found in Vol. I.

CHAPTER VII.

ON THE RIGHT OF THE AFTERBORN SON.

Rights of the afterborn son.

1. Manu and Narada say: "A son born after partition shall alone take the property of his father, or if any (of the other sons) be recruited with (the father) he shall share with them." Vrihaspati says: "When the half-brother or full brother have become separated from the father and they have brothers subsequently born, these latter shall take the father's share: One born before partition is not entitled to the father's share, nor is one born after partition to the brother's share. What is acquired by the father himself after having become separated from the sons, belongs to the son born after partition: those born before are declared not entitled to it. As in wealth, so in debts and gifts, pledges and sales, they are indefendent of each other, excepting mourning, libations and exequial rites."

2. Yajnavalkya says: "If a son be born of a wife of equal caste after partition made, he is to share; or a share may be allotted him from the estate as it is, after allowing for income and expenditure." The meaning is that if at the time of partition, a brother was in the mother's womb and he is afterwards born, he gets his share equal to the share of each of the brothers from all the other persons who had taken shares. So says Vishnu: "Sons who have separated from their father should give a share to a brother who is born after partition." He who is conceived after the time of partition, takes only the father's share and not

from his brothers born before from the text of Vrihaspati: "One born before partition is not entitled to the father's share." He takes his share from the wealth which is found after allowing for income and expenditure of the wealth that existed at the time of partition.

CHAPTER VIII.

ON THE RIGHT OF THOSE WHO RETURN AFTER PARTITION.

Rights of those who return after partition.

Vrihaspati says: "Whether partition has or has not been made, whenever an heir comes forward, he shall receive a share of such wealth as he can prove to be the joint property of the family, whether it be a debt or a document or house or field which has been inherited from the paternal grandfather, he shall take his proper share of it, when he returns after a protracted absence even. When a man has gone abroad, leaving the joint estate of his family, his share must undoubtedly be given to his descendant who has returned from abroad. Whether he be the third or the fifth or even the seventh in descent, he shall receive the share belonging to him by right of succession, when his birth and family name can be ascertained. He whom indigenous inhabitants and neighbours know to be the legal owner, to the descendants of that man must the land be surrendered by his kinsmen, when they make their appearance. Those that are already born and those who would be born in future and those who are in the mother's womb all desire maintenance from land. Therefore no one should be deprived of his land."

CHAPTER IX.

ON DIFFERENT KINDS OF SONS.

Descriptions of all kinds of sons excepting the Dattaka are omitted as unnecessary especially as the Chapter only cites texts without expressing any opinion on them, and most of those texts are to be found in Vol. I.

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Share of a son born after an adoption.

1. Vasista after premising 'when desirous of taking an adopted son' says: "If after an adoption has been made, a legitimate son be born, the adopted son shall obtain a fourth part; provided he be not engaged in rites procuring prosperity."

Katyayana says: "If a legitimate son be born, the rest are takers of a third share, provided they belong to the same class, but if of a different class, they are entitled to food and raiment only." Vrihaspati says: "The other sons beginning with the Kshetraja shall respectively take a fifth, sixth and seventh part."

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Adopted son has no rights in the natural family.

2. On the Dattaka son, Manu says: "That boy equal in caste whom his mother or his father out of affection gives confirming the gift with a libation of water, in time of distress as his son, must be considered as an adopted son. Of the man who has an adopted son possessing all good qualities, the same son shall take the inheritance though brought from another family. An adopted son shall never take the family name and the estate of his natural father; the funeral cake follows the family name and estate; the funeral offerings of him who gives his son in adoption cease as far as that son is concerned."

Mode of adoption.

3. Vasista says: "Man formed of virile seed and uterine blood proceeds from his mother and father as an effect from its cause. Therefore the father and the mother have power to give, to abandon or to sell their son. But let him not give or receive in adoption an only son. For he must remain to continue the line of the ancestor. Let a woman neither give nor receive a son except with her husband's permission. He who desires to adopt a son shall assemble his kinsmen, announce his intention to the King, make burnt offerings in the middle of the house, reciting the Vyahrithis, and take a son, one whose kinsmen are not at a distance, and one who is not nearly related. But if a doubt arises with respect to an adopted son who has kinsmen at a distance, he should be set apart like a Sudra for it is declared in the Vedas: 'through one he saves many.' 'Whose kinsmen are not at a distance' means whose maternal uncle and the like are living near. 'Not nearly related' means that one whose virtues and faults are not known may even be adopted. 'And' is not meaningless. 'If a doubt arises' means when there is doubt as to caste on account of kinsmen not being near, he being in the doubtful position of a Sudra and not entitled to the ritualistic ceremonies, he should be kept without the performance of rituals. Because a Sudra can possibly be a son. This is the intention.

CHAPTER X.

SUCCESSION TO THE ESTATE OF THE SONLESS MAN.

1. Manu says: "If the widow of a man who died without leaving issue get a son by a member of the family (Sagotra), she shall deliver to that son the whole of the property which belonged to the deceased" 'Gets a son' means raises a son by a Sagotra. This is the meaning. **Manu's rule about widows.**

2. Vriddha Manu says: "A widow who has no male issue, who keeps the bed of her lord unsullied and who strictly performs the duties of widowhood shall alone offer the cake at his obsequies and succeed to his entire property." Vrihaspati says: "In the revealed texts of the Veda, by the tradational law of the Smritis and on popular usage, the wife is declared to be half the body of her husband equally sharing the outcome of good and evil acts. Of him whose wife is not dead, half his body survives. How should any one else take the property, while half his body lives? Although kinsmen, although his father and mother, although uterine brothers be living, the wife of him who dies without leaving male issue shall succeed to his share. A wife deceased before her husband takes away his consecrated fire (Agnihotra); but if the husband dies before the wife, she takes his property, if she is faithful to him. This is an eternal law. After having received all the moveable and immoveable property, the gold, base metals, grain, liquids and wearing apparel, she shall cause his monthly, sixmonthly and annual Sraddhas to be performed. Let her propitiate with funeral oblations and pious liberality her husband's paternal uncles, *Gurus* daughter's sons, sister's sons and maternal uncles and also aged or helpless persons, guests and women (belonging to the family). His (husband's) Sapindas and Bandhavas who stand in her way and destroy the property, should be visited with the punishment of thieves by the King." **Widow's right.**

3. Narada says: "On failure of a son, the daughter succeeds, because she continues the lineage just like a son; both a son and a daughter continue the lineage of their father." Manu says: "A son is even as one's self, a daughter is equal to a son; how can another take the estate, while one's self lives." Vrihaspati says: "Equal in caste (to her father) and married to a man of the same caste as her own, virtuous, habitually submissive, she shall inherit her father's property, whether she may have been expressly appointed or not." **Daughter's right.**

Mother's right.

4. Vrihaspati says: "When a man dies without leaving either wife or male issue, the mother has to be considered as her son's heiress, or a brother may succeed, if she consents to it." Manu says: "A mother shall obtain the inheritance of a son (who dies) without leaving issue and if the mother be dead, the paternal grandmother shall take the estate."

5. Gautama says: "The heritage of reunited brothers deceased without male issue goes to the eldest brother."

Father's right.

6. Manu says: "The father shall take the inheritance of (a son) who leaves no male issue and his brothers. To the three (ancestor) water (oblation) must be offered, to three the funeral cake (Pinda) is given; the fourth (descendant) is the giver of these (oblations); the fifth has no connection (with them.) Always to that (relative within three degrees) who is nearest to the deceased Sapinda, the estate shall belong; afterwards a Sakulya shall be the heir, then the spiritual teacher or the pupil."

Yajnavalkya's rule.

7. Yajnavalkya says: "The lawfully wedded wife and the daughters also both parents, brothers likewise and their son, Gotraja, Bandhu, a pupil and a fellow-student, on failure of the first among them, the next in order is the heir to the estate of one who departed for heaven leaving no male issue. This rule extends to all classes." Vishnu says: "The wealth of a man, who dies without male issue, goes to his wife; on failure of her, to his daughter; on failure of her to his father; on failure of him to his mother; on failure of her to his brother; on failure of him, to his brother's son, on failure of him, to the Sakulyas, on failure of them, to a fellow-student; on failure of him, it goes to the King, with the exception of the Brahmana's property."

Daughter, daughter's son, uterine brothers, nephews Sakulyas, Bandhavas take.

8. Vrihaspati, after declaring the prior right of the daughter and daughter's son, says. "In default of them, uterine brothers or brother's sons, Sakulyas, Bandhavas, pupils or learned Brahmanas are entitled to the inheritance. When a man dies leaving no issue, nor wife, nor brother, nor father, nor mother, all his Sapindas shall divide his property in due shares. Half the entire wealth, however, shall first be set apart for the benefit of the deceased owner and carefully assigned for his monthly, six monthly and annual Sraddhas. When there are several relatives, ognates and cognates, who soever of them is the nearest shall take the wealth of him who died leaving no issue."

9. Baudhayayana says: "The greatgrandfather, the grandfather, the father, one's self, uterine brothers, the son by a wife of equal caste, the grandson and the greatgrandson who are of unseparated Daya (body) are called Sapindas.

Persons of separated Daya (body) are called Sakulyas. If no other relations are living, the property discends to them (Sapindas)."

10. Parthinashi says: "The property of a sonless deceased person goes to the brother, failing him, the mother and father take or the eldest wife, Sagotra pupil or fellow-student." Now by the text of Vishnu: "the wealth of a sonless man goes to his widow," it is established that the estate of a sonless man goes to his widow, even when there is a brother. This rule, it appears from a consideration of the text of Vriddha Manu: "a sonless widwow who keeps the bed of her lord unsullied &c.," applies in the case of a widow who has got the qualities of chastity and observing due austerities. As regards her, who is not like this, even when she exists, the estate goes to the brother. The text of Sankha: "They should make provision for his women, till they die, in case they remain faithful to the bed of their husband. Should the women not remain chaste, they must cut off that allowance" refers to the case of women who are wanting in chastity and the observance of due austerities.

11. Yajnavalkya in the text: "the both parents, brothers likewise &c.," which refers to the case of a chaste mother, declares the right of the parents even when there is a brother. That refers to property acquired by the father, grandfather and the like. Property which is acquired without detriment to the paternal wealth, belongs to the brothers even when there are the parents, from the text (of Devala): "Then the uterine brothers shall divide the heritage of a sonless person or the daughters of the same caste or the surviving father, half brothers of the same caste, the mother and the widow, according to the order mentioned; failing them, those belonging to the same family living together."

12. On failure of Sapindas, the Sakulyas (inherit). On failure of them, the teacher, who holds the place of a spiritual father, a pupil, or an officiating priest shall take it; on failure of them, the King.

Narada says: "On failure of daughters, the Sakulyas and after them, the Bandhavas, next a member of the same caste, in default of all, the estate goes to the King." Excepting a Brahmana's estate: "the estate of an heirless Brahmana should be given to learned Brahmanas."

13. Baudhayana says: "Brahmana's property singly as a poison destroys the son and the frmily. Therefore, the King should never take a Brahmana's property. Whatever belongs to a Brahmana is most malignant poison." Vrihaspati says: "Should a Kshatriya, Vaisya, or Sudra die

without leaving male issue, or wife, or brother, then property shall be taken (as escheat) by the King, for he is the lord of all."

Sankha Sikhita says: "The property of a Srotriya Brahmana is taken by the society of Brahmanas and not by the king. The king should not take the property appropriated to the Gods or Brahmanas, nor a thing kept in deposit, nor a pledge, nor the property of minors and women. The property of women is sixfold. The property of minors is the paternal."

13. Manu says: "The inheritance of a minor, the king should preserve, as long as he does not return from the Guru's house or does not become of age." Vishnu says: "The king should protect the property of minors, helpless persons and women." Sankha Likhita says: "The king should protect the property of infants who have not attained majority, of the widows, of learned Brahmanas and of heroes when their husbands are dead."

Bandhayayana says when dealing with the right of sons: "The shares of sons who are minors, together with interest, should be placed under good protectien until the majority of the owners."

Katyayana says: "The share of a person who has gone abroad shall be preserved in its entirety: When a man dies leaving an infant son, his heritage should be protected by the relatives of the son. The infants shall afterward divide the same according to their proper shares."

Vishnu says: "And he who inherits the wealth offers the funeral oblation (*pinda*) to the deceased." Smriti says: "He who takes one's property shall perform his Sraddha and shall offer the pindas to the three ancestors." Vriddha Manu says: "A brother, or a brother's son, or a Sapinda or a pupil should first perform the ceremony of uniting him with the Sapindas and then offer him the funeral ceremonies customary on joyful occasions." Vasista says: "The son should offer the Pinda, even if he does not obtain the father's estate."

Succession to estate of hermits.

Vishnu says: "The wealth of a deceased hermit shall be taken by his spiritual teacher or his pupil may take it." Yajnavalkya says: "The heirs to the property of a hermit of an ascetic and of a student in theology are in order, the preceptor, a virtuous pupil, a spiritual brother and one belonging to the same hermitage."

The Chapters on Reunion, Evidence of partition and effect of partition are omitted as they simply cite without any comments the texts which are all inserted in Vol. I.

लक्ष्मीधर कृत—

कृत्यकल्पतरौ व्यवहारकाण्डम्।

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अथ दायविभागः।

तत्र नारदः। विभागोऽर्थस्य पित्र्यस्य पुत्त्रैर्यत्र प्रकल्प्यते दायभाग इति प्रोक्तं तद्विवादपदं बुधैः। मनुः। ऊर्द्धं पितुश्च मातुश्च समेत्य भ्रातरः समम्। भजेरन् पैतृकं ऋक्थमनीशास्ते हि जीवतोः। देवलः। पितर्य्युपरते पुत्त्रा विभजेरन् पितुर्धनम्। अस्वाम्यं हि भवेदेषां निर्द्दोषे पितरि स्थिते। निर्द्दोषः पातित्यादि दोषरहितः। नारदः। पितर्य्यूर्द्धं गते पुत्त्रा विभजेरन् धनं पितुः। मातुर्दुहितरोऽभावे दुहितॄणां तदन्वयः। शङ्खलिखितौ। न जीवति पितरि पुत्त्रा ऋक्थं विभजेरन्। यद्यपि स्यात् पश्चादधिगतमेतैरनर्हा एव पुत्त्राः। अर्थधर्म्मयोरस्वातन्त्र्यात्। पश्चादधिगतं पितृधन व्यापार निरपेक्षम्। पुत्रैः पश्चात् समर्थै र्विद्यादिभिरुपार्ज्जितम्। अथ मनुः। ज्येष्ठ एव तु गृह्णीयात् पितृधनमशेषतः। शेषास्तमुपजीवेयुर्यथैव पितरं तथा। ज्येष्ठेन जातमात्रेण पुत्त्रीभवति मानवः। पितृणामनृणश्चैव स तस्मात् सर्व्वमर्हति। यस्मिन्नृणं सन्नयति येन चानन्त्यमश्नुते। स एव धर्म्मजः पुत्रः कामजानितरान् विदुः। पितेव पालयन् पुत्त्रान ज्येष्ठो भ्रातॄन् यवीयसः। पुत्त्रवच्चापिवर्त्तेरन् ज्येष्ठे भ्रातरि धर्म्मतः। ज्येष्ठः कुलं वर्द्धयति विनाशयति वा पुनः। ज्येष्ठः पूज्यतमो लोके ज्येष्ठः सद्भिरगर्हितः। यो ज्येष्ठो ज्येष्ठवृत्तिःस्यान्मातेव स पितेव सः। अज्येष्ठवृत्तिर्यस्तु स्यात् सम्पूज्यस्तु बन्धुवत्। तथा। न चादत्त्वा कनिष्ठेभ्यो ज्येष्ठः कुर्व्वीत यौतकं। यौतकं पृथग्भूतद्रव्यं गवादि। नारदः। बिभृयाद्वेच्छतः सर्व्वान् ज्येष्ठो भ्राता यथा पिता। भ्राता शक्तः कनिष्ठो वा शक्त्यपेक्षा कुले स्थितिः। बृहस्पतिः। द्रव्ये पितामहोपात्ते स्थावरे जङ्गमे तथा समंस्वित्वमाख्यातं पितुः पुत्त्रस्य चैवहि। पैतामहं एवं पित्रा स्वशक्त्या यदुपार्ज्जितम्। विद्या शौर्य्यादिना

वाप्तम् तत्र स्वाम्यं पितुः स्मृतं। प्रदानं स्वेच्छया कुर्य्यात् भोगं चैव ततो धनात्। तदभावे तु तनयाः समांशाः परिकीर्त्तिताः। अथ पुत्रविभागरीत्यधिकारे नारदः। मातुर्निवृत्ते रजसि प्रत्तासु भगिनीषु च। निवृत्ते वापि रमणे पितर्य्युपरतस्पृहे। निवृत्ते रमणे रति शक्तौ निवृत्तायां। वृहस्पतिः। पित्रोरभावे भ्रातॄणां विभागः संप्रदर्शितः। मातुर्निवृत्ते रजसि जीवतोरपि शस्यते। शङ्ख-लिखितौ। जीवति पितरि ऋक्थविभागो ऽनुमतः। प्रकाशं वा मिथो वा धर्म्मतः। हारीतः। जीवन्नेव वा प्रविभज्य वनमाश्रयेत्। वृद्धाश्रमं वा गच्छेत् स्वल्पेन वा संविभज्य भूरिष्ठमादाय वसेत्। यद्युपदस्येत् पुनस्तेभ्यो गृह्णीयात्। क्षीणांश विभजेत् उपदस्येत् उपजीवयेत्। विष्णुः। पिताचेत् पुत्रान् विभजेत् तस्य स्वेच्छा स्वयमुपात्तेऽर्थे। याज्ञवल्क्यः। विभागं चेत् पिता कुर्य्यात् स्वेच्छया विभजेत् सुतान। ज्येष्ठं वा श्रेष्ठभागेन सर्व्वे वा स्युः समांशिनः। यदि कुर्य्यात् समानांशान् पत्नाः कार्य्याः समांशिकाः। न दत्तं स्त्रीधनं यासां भर्त्ता वा श्वशुरेण वा। नारदः। द्वावंशौ प्रतिपद्येत विभजन्नात्मनः पिता। पित्रधिकारे शङ्खलिखितौ। स यद्येक पुत्रः स्याद द्वौभागावात्मनः कुर्य्यात्। भाष्ये पुत्र शब्दोनास्ति सयद्येकः स्यात्।

अथ प्रमीतपितृविभागः।

याज्ञवल्क्यः। विभजेरन् सुता पित्रो रुर्द्धं ऋक्थ मृणं समं। तथा सामान्यार्थं समुत्थाने विभागस्तु समः स्मृतः। अनेकपितृकाणां तु पितृतो भागकल्पना। सामान्यार्थसमुत्थान इति। यदा सामान्यस्यार्थस्य कृष्यादिना सम्यगुत्थानं भवति। तदासमोविभागो न तत्र बहुतरमनेनोपात्तमित्यपेक्षा न कर्त्तव्येत्यर्थः। अनेकपितृ-काणामिति। अनेकभ्रातॄणां ये पुत्रा स्तेषां समविषमसंख्यकानामपि पैतामहे धने विभज्यमाने तत् पितॄणांयोंऽशः स एव तेषां न पुनः प्रत्येकमपकल्पनमित्यर्थः। वृहस्पतिः। मह्यमेते सुखं प्राप्तं सर्व्वं तत्र समांशिनः। तत् पुत्राः विषम समाः पितुः भागहरा स्मृताः। कात्यायनः। अविभक्तेऽनुजे प्रेते तत् सुतम् ऋक्थभागिनम्। कुर्व्वीत जीवनं येन लब्धन्नैव पितामहात्। लभेतांशं स पित्र्यान्तु पितृव्यात्तस्य वा सुतात्। स एवांशन्तु सर्व्वेषां भ्रातॄणां न्यायतो भवेत्। लभेत तत् सुतोवापि निवृत्तिः परतो भवेत्। देवल.। अविभक्तविभक्तानां कुल्यानां वसतां सह भूयोदायविभागःस्यादाचतुर्थादिति स्थितिः। तावत् कुल्याः सपिण्डा

स्युः पिण्डभेदस्ततः परम्। समभिच्छन्ति पिण्डानां दायार्थस्य विभाजनम्। विधिरेष सवर्णानां बहूनां समुदाहृतः। एक एव सवर्णःस्याद्दायोऽत्र न विभज्यते। अविभक्तानां च वशिष्टः। अथ भ्रातॄणां दायविभागः। याश्चानपत्याः स्त्रियस्तासामापुत्रलाभात्। स्त्रियो भ्रातृभार्य्याः। आपुत्रलाभादिति याश्च सम्भावित पुत्रलाभास्तदासामपिभागो देयः। यदि तु पुत्रः नोत्पद्यते तदासौभागोभ्रातॄणां। तासान्तु भरणमात्रम्। याज्ञवल्क्यः। पितुरूर्द्ध्वं विभजतां माताप्यंशं समं हरेत्। पितेत्यनुवृत्तौ बृहस्पतिः। तदभावेतु जननी तनयानां समांशिनी। समांशाः मातरस्तेषां तुरीयांशा च कन्यका। तुरीयांशः सजातीयपुत्रांशां यावानंश स्तदपेक्षया चतुर्थभागः संस्कारार्थं पितृधने कल्पनीयः। यत्तु विष्णुवचनं। मातरः पुत्र भागानुसारेण भागहारिण्यः याश्च दुहितर इति। तदप्येतत् वचनानुसारात् दुहितॄणां चतुर्भागपरम्। व्यासः। असुतास्तु पितुः पत्न्यः समानांशा प्रकीर्त्तिताः। पितामह्यश्च सर्व्वास्ताः मातृकल्पाः प्रकीर्त्तिताः। अथ बृहस्पतिः। पितृरिक्थहरा पुत्रा सर्व्व एव यथांशतः। विद्याकर्म्मयुतस्तेषामधिकं लब्धुमर्हति। विद्याविज्ञानशौर्य्यार्थे ज्ञानदानक्रियासु च। यस्येह प्रथिता कीर्त्तिः पितरस्तेन पुत्रिणः। नारदः। कुटुम्बार्थेषु चोद्युक्त तत् कार्य्यं कुरुते तु यः। सभ्रातभिर्व्वहणीयो ग्रासाच्छादनवाहनैः। मनुः। भ्रातॄणां यस्तुनेहेतधनं शक्तः स्वकर्म्मणा। सनिर्भाज्य स्वकादंशात् किञ्चिद्दत्त्वोपजीवनम्। आपस्तम्बः। सर्व्वेहि धर्म्मयुक्ता भागिनः। यस्त्वधर्म्मेण द्रव्याणि प्रतिपादयति ज्येष्ठोऽपि तमभागं कुर्व्वीत। अधर्म्मेण द्यूतादिना प्रतिपादयति विनियुनक्ति।

अथ विभागानर्हाः।

तत्र गौतमः। सवर्णपुत्रोऽप्यन्यायवृत्ती न लभेतैकेषाम्। मनुः। सर्व्व एव विकर्म्मस्था नार्हन्ति भ्रातरोधनम्। शङ्खलिखितौ। अपपात्रितस्य रूक्थ पिण्डोदकानि व्यावर्त्तन्ते। बृहस्पतिः। सवर्णजोऽप्यगुणवान् नार्हःस्यात् पैतृके धने। तत्पिण्डदाः श्रोत्रिया ये तेषान्तदभिधीयते। उत्तमर्णाधमर्णेभ्यः पितरं त्रायते सुतः। अतस्तुविपरीतेन नास्तितेन प्रयोजनम्। तथा गवा किं क्रियते न दोग्ध्री न च गर्भिणी। कोऽर्थः पुत्त्रेण जातेन योन विद्वान् न धार्म्मिकः। शास्त्रशौर्य्यार्थरहित स्तपोज्ञानविवर्जितः। आचारहीनः पुत्रस्तु मूत्रोच्चार समःस्मृतः। अथ मनुः। अनंशौक्लीबपतितौ जात्यन्धबधिरौ तथा। उन्मत्तजड़मूकाश्च ये च केचिन्निरिन्द्रियाः सर्व्वेषामपितुन्याय्यं दातुंशक्त्या मनीषिणा। ग्रासाच्छादनमत्यन्तं पतितोह्यददद्भवेत्। यद्यर्थिता तु दारैःस्यात् क्लीबादीनां कथञ्चन।

तेषामुत्पन्नतन्तुनामपत्यं दायमर्हति। निरिन्द्रियाः पङ्ग्वादयः। क्लीबादीनामिति। असद्गुणसम्बिज्ञानो बहुव्रीहिः। याज्ञवल्क्यः। पतितस्तत् सुतः क्लीबः पङ्गुरुन्मत्तको जड़ः। अन्धोऽचिकित्स्यरोगाद्या भर्त्तव्यास्तु निरंशकाः। औरसाः क्षेत्रजास्त्वेषां निर्द्दोषा भागहारिणः। सुताश्चैषां प्रभर्त्तव्या यावद् वै भर्त्तृसात्कृताः। नारदः। पितृद्विट् पतितः षण्डोयश्च स्यादपपात्रितः। औरसा अपि नैतेऽंशं लभेरन् क्षेत्रजा नु कुतः। अपपात्रितः। राजवधादिनादोषेण बान्धवैर्यस्य घटापवर्ज्जनं कृतं। देवलः। मृतेन पितरि क्लीब कुष्ठ्युन्मत्तजड़ान्धकाः पतितः पतितापत्यं लिङ्गी दायांशभागिनः। तेषां पतितवर्ज्जेभ्यो भक्तवस्त्रं प्रदीयते। तत् पुत्राः पितृदायांशं लभेरन् दोषवर्ज्जिताः। मृतेन पितरीति। मृते पितरि क्लीबादयो नांशभागिन इति सम्बन्धः। विष्णुः। पतितक्लीबाचिकित्स्य रोगविकलास्त्वभागहारिणः। रिक्थग्राहिभिस्ते भर्त्तव्याः। तेषामेव औरसाः पुत्रा भागहारिणः। नतु पतितस्य पतनीये कृते कर्म्मणि अनन्तरोत्पन्नाः। प्रतिलोमासु स्त्रीष्वुत्पन्नाश्चाभागिनः। तत्पुत्रा पैतामहेऽप्यथ। रिक्थग्राहिभिस्ते भर्त्तव्याः। गौतमः। जड़क्लीबौतु भर्त्तव्यावपत्यं जडस्य भागार्हम्। शूद्रापुत्रवत् प्रतिलोमास्विति। शूद्रापुत्रोप्यनपत्यस्य शुश्रूषुश्चेल्लभेत वृत्तिमूलमन्तेवासिविधिना। तत् पुर्व्वोक्त प्रकारेण यथा शूद्रापुत्रो जीवनमात्रं लभते एवं प्रतिलोमा सुतोऽपीति। कात्यायनः। अक्रमोढ़ासुतस्यैव सगोत्राद्यश्च जायते प्रव्रज्यावसितश्चैव न रिक्थं तेषु कर्हिचित्। अक्रमोढासुतस्त्वसवर्णश्च यदा पितुः। प्रतिलोमप्रसूताया तस्या पुत्रो न रिक्थभाक्। ग्रासाच्छादनमत्यन्तं देयं तद्बन्धुभिर्धृतम्। बन्धुनामप्यभावेतु पित्र्यं द्रव्यं तदाप्नुयात्। अपित्र्यं द्रविणं प्राप्ता दापणीया न बान्धवाः। अक्रमोढायामसवर्णायां जातः न रिक्थभागेवं क्रमोढ़ायामसवर्णेण जातः रिक्थभागिति। सगोत्रात् सगोत्रायायश्च जायते इति।

अथ विभाज्यम्।

तत्र कात्यायनः। पैतामहं च पित्र्यं च यदन्यत् स्वयमर्ज्जितम्। दायादानां विभागेतु सर्व्वमेतद्विभाज्यते रिक्थं प्रीतिप्रदत्तं तु दत्त्वाशेषं विभाजयेत्। आचतुर्थात् तदप्याप्तं क्रमेणैव तु तत्सुतैः। आचतुर्थात् पुरुषात्। नारदः। यच्छिष्टं पितृदायेभ्यो दत्त्वर्णं पैतृकं च यत्। भ्रातृभिस्तद् विभक्तव्यमृणी स्यादन्यथा पिता। पितृदायेभ्यः पितृदत्तेभ्यः। कात्यायनः। भ्राता पितृव्यमातृभ्यां कुटुम्बार्थमृणं कृतम्। विभागकाले दातव्यं रिक्थिभिः सर्व्वमेवतु। तदृणं धनिने देयं नान्यथैव प्रदापयेत्। श्रावितं चेत् प्रमाणेन विरोधात् परतो यदा। पित्र्यं पित्र्यणसम्बन्ध

मात्मीयत्वात्मना कृतम्। ऋणमेवं विधं शोध्यं विभागे बन्धुभिः सह। धर्मार्थं प्रीतिदत्तं च यद्दत्तं स्यान्नियोजितम्। तद्दृश्यमानं विभजेन् न दानं पैतृकाद् धनात्। दृश्यमानं विभज्येत गृहं चैवं चतुष्पदं। गूढद्रव्याभिशङ्कायां प्रत्ययस्तत्र कीर्त्तितः। गृहोपस्करवाह्यास्तु दोह्याभरणकर्म्मकाः। दृश्यमाना विभज्यन्ते कोशं गूढेऽब्रवीद्भृगुः। तद्दृणं धनिने इत्यादेरयमर्थः। विभागकाले विरोधात् परतः परस्पर नियुक्ते यत्र दत्तं तद्दणं परत उत्तरकालं यदादेयं भवति तदाप्रमाणेन चेद् विभावितं भवति ततो देयं नान्यथेति। पितृऋणं सर्व्वं पित्र्यर्णपरिशोधनार्थं यत्कृतं। आत्मीयं कुटुम्बार्थं यत्कृतमिति आत्मना कृतमपि कुटुम्बार्थमेव। धर्मार्थं प्रीतिदत्तमिति। यत् साधारणेन साधारणं धनम् धर्मार्थं दत्तं प्रीत्या च दत्तम्। नियोजितमुत्तमर्णत्वेनान्यस्मै तद् ज्ञायमानं विभक्तव्यम् यतो विभक्त कृत् पैतृकाद्धनात् साधारणात् दानं नोचितमिति।

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अथ स्त्रीधनकृत्यम्।

तत्र मनुः। न निर्हारं स्त्रियः कुर्य्युः कुटुम्बाद्बहुमध्यगात्। स्वकादपि च वित्ताद्धि स्वस्य भर्त्तुरनाज्ञया। निर्हारो निष्कृष्य हरणम्। कुटुम्बपदे कुटुम्ब धनं तत् साधारणमित्युच्यते। स्वकात् स्वभर्त्तुरसाधारनात्। मनुविष्णू। पत्यौ जीवति या स्त्रीभिरलङ्कारो धृतो भवेत्। न तं भजेरन् दायादा भजमानाः पतन्ति ते। आपस्तम्बः। अलङ्कारो भार्य्याया ज्ञातिधनं चेत्येके। नारदः। भर्त्ता प्रीतेन यद्दत्तं स्त्रियै तस्मिन् मृतेऽपि तत्। सा यथाकाममश्नीयात् दद्याद् वा स्थावरादृते। व्यासः। द्विसाहस्र परोदायः स्त्रियै देयो धनस्य तु। यत्र भर्त्ता धनं दत्तं सा यथाकाममवाप्नुयात्। कात्यायनः। ऊढ़या कन्यया वापि पत्युः पितृगृहेऽपिवा भ्रातुः सकाशात् पित्रोर्वा लब्धं सौदायिकं स्मृतम्। सौदायिकं धनं स्त्रीणां प्राप्य स्वातन्त्र्यमिष्यते। यस्मात् तदानृशंस्यार्थं तै र्दत्तं तत् प्रजीवनम्। सौदायिके सदा स्त्रीणां स्वातन्त्र्यं परिकीर्त्तितम्। विक्रये चैव दाने च यथेष्टं स्थावरेष्वपि। भर्तृदायं मृते पत्यौ विन्यसेत् स्त्री यथेष्टतः। विद्यमाने तु संरक्षेत् क्षपयेत्तत् कुलेऽन्यथा। अपुत्रा शयनं भर्त्तुः पालयन्ती गुरौ स्थिता। भुञ्जीतामरणात्क्षान्ता दायादा ऊर्द्धमाप्नुयुः। पत्युर्गृहं इमिति सम्बन्धः। भ्रातुः पित्रोऽर्थेत्युपलक्षणं। तेषामान्येभ्योपि स्वमातापितृकुलेभ्योऽपि स्वमातापितृकुलेभ्यो यल्लब्धं धनम्। तत् सौदायिकं। तत्र स्थावरेऽपि स्त्रियां दानविक्रयादिषु

स्वातन्त्र्यं भर्तृदत्तेषु स्थावरातिरिक्तेष्वेव यथेष्टं दानाद्यधिकारो यथाह। नारदः। भर्त्रा प्रीतेन दत्तं स्त्रियै तस्मिन् मृतेऽपि तत्। सा यथाकाममश्नीयात् दद्याद्वा स्थावरादृते इति। राजा ऋक्थमनुपालयेदित्यनुवृत्तौ मनुः। वशापुत्रासु चैव स्याद्रक्षणं निष्कुलासु च। पतिव्रतासु च स्त्रीषु विधवास्वातुरासु च। जीवन्तीनान्तु तासां येतद्धरेयुः स्वबान्धवाः। तांच्छिष्याच्चौरदण्डेन धार्म्मिकः पृथिवीपतिः। वशा वन्ध्या अपुत्रा मृतपुत्रा निष्कुला न यस्या मातृपितृकुलः। देवलः। वृत्तिराभरणं शुल्कं लाभस्तु स्त्रीधनं भवेत्। भोक्त्री च स्वयमेवेदं पतिर्नार्हत्यनापदि। वृथा मोक्षे च भोगे च स्त्रियै दद्यात् सवृद्धिकम्। पुत्रार्त्तिहरणं वापि स्त्रीधनं भोक्तुमर्हति। कात्यायनः। न भर्त्ता नैव च सुतो न पिता भ्रातरो न च। आदाने वा विसर्गे वा स्त्रीधने प्रभविष्णवः। यदि त्वेकतरो ह्येषां स्त्रीधनं भक्षयेद् बलात्। सवृद्धिं प्रतिदाप्यः स्याद्दण्डं चैव समाप्नुयात्। तदेव यद्यनुज्ञाप्य भक्षयेत् प्रीतिपूर्व्वकम्। मूलमेव तदा दाप्यः स यदा धनवान् भवेत्। व्याधितं व्यसनस्थं धनिकैश्चोपपीडितम्। ज्ञात्वा निसृष्टं यत् प्रीत्या दद्याद्दात्मेच्छया तु सः। याज्ञवल्क्यः। दुर्भिक्षे धर्म्मकार्य्ये च व्याधौ संप्रतिरोधके। गृहीतं स्त्रीधनं भर्त्ता न स्त्रियै दातुमर्हति। कात्यायनः। यदि चेत् स द्विभार्य्यः स्यात् न च तां भजते पुनः। प्रीत्या विसृष्टमपि चेत् प्रतिदाप्यः स तद्बलात्। ग्रासाच्छादनवासानामाच्छेदो यत्र योषितः। तत्र स्वमाददीत स्त्री विभागं ऋक्थिनस्तथा। लिखितस्येति धर्म्मोऽयं प्राप्ते भर्त्तृकुले वसेत्। व्याधिता प्रेतकाले तु गच्छेद्वन्धुकुलं ततः। अपकारक्रियायुक्ता निर्लज्जा चार्थनाशिका। व्यभिचाररता या च स्त्रीधनं न सार्हति। यज्ञार्थे द्रव्यमुत्पन्नं तस्माद्द्रव्यं नियोजयेत्। स्थानेषु धर्म्मजुष्टेषु न स्त्रीमूर्खविधर्म्मिषु। भर्त्रा प्रतिश्रुतं देयमृणवत् स्त्रीधनं सुतैः। तिष्ठेद् भर्त्तृगृहे यातु न या पितृकुले वसेत्।

अथ स्त्रीधनविभागः।

तत्र मनुः। जनन्यां संस्थितायान्तु समं सर्व्वे सहोदराः। भजेरन्मातृकं ऋक्थं भगिन्यश्च सनाभयः। यास्तासां स्युर्दुहितरस्तासामपि यथार्हतः। मातामह्याधनात् किञ्चित् प्रदेयं प्रीतिपूर्व्वकम्। अन्वाधेयं च यद्दत्तं पत्या प्रीतेन चैव यत्। पत्यौ जीवति वृत्तायाः प्रजायास्तद्धनं भवेत्। सनाभयोऽत्र सोदर्य्याः। यथार्हतः द्रव्याल्पत्ववहुत्वादियोग्यतानुसारेण। अन्वाधेयं विवाहपरकालं भर्त्तृकुले पितृकुले च यल्लब्धम्। वृहस्पतिः। स्त्रीधनं स्यादपत्यानां दुहिता च तदंशिनी। अप्रत्ता चेत् समूढ़ा तु लभते मानमात्रकम्। मनुः। मातुस्तु

यौतकं यत्स्यात् कुमारीभाग एव सः। यौतकं विवाहकाले पित्रादिभिः स्त्रियै यद्दत्तं धनम्। गौतमः। स्त्रीधनं दुहितॄणामप्रत्तानामप्रतिष्ठितानां च। अत्राप्रतिष्ठिताविवाहिता अपि निर्धनभर्त्तृका दुर्भगा अनपत्याच। वशिष्ठः। मातुः पारिनाह्यं स्त्रियो विभजेरन्। पारिणाह्यं परिच्छदः आदर्शकं। कन्यादिः विभजेरन्। ऊर्द्धमित्यनुवृत्तौ याज्ञवल्क्यः। मातुर्दुहितरः शेषं ऋणात्ताभ्य ऋतेऽन्वयः। अन्वयस्तु पुत्रयोषादिः विवाहेऽपि निवृत्तौ। विष्णुः। सर्व्वत्र च प्रसूतायां तद्धनं दुहितृगामि। मनुः। स्त्रियस्तु यद्भवेत् वित्तं पित्रा दत्तं कथञ्चन। ब्राह्मणीतद्धरेत् कन्या तदपत्यस्य वा भवेत्। अस्यार्थः। स्त्रीनाम भर्त्तृकानामनपत्यानाञ्च पित्रा दत्तं सपत्नीदुहिता ब्राह्मणी या कन्या सा हरेदपत्यं च। कात्यायनः। दुहितॄणामभावेतु ऋक्थं पुत्रेषु तद्भवेत्। बन्धुदत्तं तु बन्धूनामभावे भर्त्तृगामितत्। भगिन्योवान्धवैः सार्द्धं विभजेरन् सभर्त्तृकाः। स्त्रीधनस्य तु धर्म्मोऽयं विभागस्तु प्रकल्पितः।

अथाप्रजायाः।

अत्र मनुः। ब्राह्मदैवार्षगान्धर्व्वप्राजापत्येषु यद्धनम्। अप्रजायामतीतायां पत्युरेव तदिष्यते। देवलः। सामान्यं पुत्रकन्यानाम् मृतायां स्त्रीधनं स्त्रियाम्। अप्रजायाम् हरेद् भर्त्ता माता भ्राता पिता वा। गौतमः। भगिनीशुल्कं सौदर्य्याणामूर्द्ध्वंमातुः। पूर्व्वञ्चैके भगिनीशुल्कं आसुरादिविवाहोढाया भगिन्या धनं ऊर्द्धं मातुश्च। याज्ञवल्क्यः। बन्धुदत्तं तथा शुल्कमन्वाधेयकमेवच। अप्रजायामतीतायां बान्धवास्तदवाप्नुयुः। मनुः। अपुत्रायां मृतायान्तु पुत्रिकायां कथञ्चन। धनं तत् पुत्रिकाभर्त्ता हरेतैवाविचारयन्। पैठीनसिः। प्रेतायां तु पुत्रिकायां न भर्त्ता द्रव्यमर्हति अपुत्राया कुमार्य्या स्वसा वा तद् ग्राह्यमिति। याज्ञवल्क्यः। दत्वा कन्यां हरन्दण्ड्यः व्ययं दद्यात्तु सोदयम्। मृतायां सर्व्वमादद्यात् परिशोध्योभयव्ययं। अस्यार्थः। स्वयमेव पिता दत्वा हरन् कारण मन्तरेण कन्यामपहरन्दण्ड्यो भवति। यच्च वरेण दत्तं हिरण्यादिकं तत् सवृद्धिकं दद्यादिति कन्यादातुरुपदेशः। अथ कथंचित् वाग्दत्ता मृता तदास्याः मृतायाः सर्व्वमादद्यात् यत् पूर्व्वंदत्तमुभयोरपि व्ययं शोधयित्वा कन्यापित्रा सम्बन्धिनामुपचारार्थं दत्तं। एवं सम्बन्धिनां मङ्गलार्थं दत्तमङ्गुरीयादिकमुभयं परिगण्य च। अर्हतीत्यनुवृत्तौ गौतमः। स्वञ्च शुल्कं वोढा। बौधायनः। ऋक्थं मृतायाः कन्याया गृह्णीयुः सोदरा स्वयं। तदभावे भवेन्

मातुस्तदभावे पितुर्भवेत्। बृहस्पतिः। मातृष्वसा मातुलानी पितृव्यस्त्री पितृष्वसा। श्वश्रूः पूर्व्वजपत्नी च मातृतुल्याः प्रकीर्त्तिताः। यदासामौरसो न स्यात् सुतो दौहित्र एव च। तत्सुतो वा धनं तासां स्वस्रीयाद्याः समाप्नुयुः।

अथ स्त्रीधनलक्षणम्।

तत्र मनुकात्यायनौ। अध्यग्न्यध्यावाहनिकं दत्तं प्रीतितः स्त्रियै। भ्रातृमातृपितृप्राप्तं षड्विधं स्त्रीधनं स्मृतम्। नारदः। अध्यग्न्यध्यावहनिकं भर्तृदायस्तथैव च भ्रातृदत्तं पितृभ्यां च षड्विधं स्त्रीधनं स्मृतम्। विष्णुः। पितृमातृसुतभ्रातृदत्तमध्यग्न्युपागतम्। आधिवेदनिकं बन्धुदत्तं शुल्कमन्वाधेयकमिति स्त्रीधनम्। देवलः। वृत्तिराभरणं शुल्कं लाभश्च स्त्रीधनं भवेत्। कात्यायनः। प्राप्तं शिल्पैस्तु यद्वित्तं प्रीत्या चैव यदन्यतः। भर्तुः स्वाम्यं सदा तत्र शेषं तु स्त्रीधनं भवेत्। विवाहकाले यत् स्त्रीभ्यो दीयते ह्यग्निसन्निधौ। तदध्यग्निकृतंसद्भिः स्त्रीधनं परिकीर्त्तितं। यत् पुनः लभते नारी नीयमानाहि पैतृकात्। अध्यावाहनिकं नाम स्त्रीधनम् समुदाहृतं। प्रीत्या प्रदत्तं यत्किञ्चित् श्वश्र्वा वा श्वशुरेण वा। पादवन्दनिकंयत्ततल्लावण्यार्ज्जितमुच्यते। विवाहात् परतो यत्तुलब्धं भर्तृकुलात् स्त्रिया। अन्वाधेयं तदुक्तं तु लब्धं यत्स्वकुलात् तथा। ऊढ़ा लब्धं तु यत्किञ्चित् सस्कारात् प्रीतितः स्त्रिया। भर्त्तुः पित्रोः सकाशाद्वा अन्वाधेयन्तु तत् भृगुः। गृहोपस्कारवाह्यानां दोह्याभरणकर्म्मिणः। मूल्यं लब्धं तु यत्किञ्चित् शुल्कं तत् परिकीर्त्तितम्।

तथाच लुप्तविभागः।

तत्र मनुः। ऋणेधने च सर्व्वस्मिन् प्रविभक्ते यथाविधि। पश्चात् दृश्यते यत्किञ्चित् तत् सर्व्वं समतान्नयेत्। कात्यायनः। प्रच्छादितं तु यद्येन पुनरागत्य तत् समम्। भजेरन् भ्रातृभिः सार्द्धमभावे हि पितुः सुता.। अन्योन्यापहृतं द्रव्यं दुर्विभक्तं च यद्भवेत्। यथा प्राप्तं विभज्येत समभागेन तद्भृगुः। विभक्तेनैव यत्प्राप्तं धनं--तस्यैव तद्भवेत्। हृतं नष्टं च यल्लब्धं प्राक्तञ्च पुनर्भजेत्। बन्धुनापहृतं द्रव्यं बलान्नैव प्रदापयेत्। बन्धूनामविभक्तानां भोगं नैव प्रवर्त्तते। बृहस्पतिः। साधारण ऋणन्यासनिह्नवे छद्मना क्रियाम्। पार्श्वहानिकरींकृत्वा पश्चाच्छेषं प्रदापयेत्। मायाविनो हृतधनाः क्रूरा लुब्धाश्रयी नराः। सम्प्रीत्या साधनीयास्ते स्वार्थे दान्ना छलेन वा।

अथ विभक्तजविभागः।

तत्र मनुनारदौ। ऊर्द्ध्वं विभागाज्जातस्तु पित्र्यमेव हरेद्धनं। संसृष्टास्तेन वा ये स्युर्विभजेत स तैः सह। बृहस्पतिः। पित्रा सह विभक्ता ये सापत्ना वा सहोदराः। जघन्यजास्तु ये तेषां पितृभागहरास्तु ते। अनीशः पूर्व्वजः पित्र्ये भ्रातृभागे विभक्तजः। पुत्रैः सह विभक्तेन पित्रा यत् स्वयमर्ज्जितम्। विभक्तजस्य तत् सर्व्वं मनीशाः पूर्व्वजाः स्मृताः। यथाधने तथर्णेऽपि दानाधानक्रयेषु च। परस्परमनीशास्ते मुक्ता शौचोदकक्रियाम्। याज्ञवल्क्यः। विभक्तेषु सुतो जातः सवर्णायां विभागभाक्। दृश्याद्वा तद्विभागः स्यादायव्ययविशोधितात्। अस्याय मर्थः। यो विभागकाले गर्भस्थो न च जातः पश्चाज्जातः सर्व्वान्यंशहरेभ्य सकाशात् स्वांशं तदंशसमं लभेत्। तदाह विष्णुः। पितृविभक्ता विभागानन्तरोत्पन्नस्य भागं दद्युरिति। विभागानन्तरकालं च यस्य गर्भाधानं स पित्र्यमेवांश लभते नतु पूर्व्वजादंशादाप। अनीशः पूर्व्वजः पित्र्ये भ्रातृभागे विभक्तजः इति बृहस्पति वचनात्। विभागकालप्राप्तमायव्ययशोधितं यावद्विद्यमानं धनमुपलभ्यते ततो वा धनात् स्वांशं लभत इति।

अथ विभक्तागतविभागः।

तत्र बृहस्पतिः। कृतेऽकृते वा विभागे ऋक्थी यत्र प्रवर्त्तते। सामान्यन्तु भवेद् यत्तत्र भागहरस्तु सः। ऋणं लेख्यं गृहं चेत्रं यस्य पैतामहं भवेत्। चिरकालात् प्रोषितोऽपि भागभागागतस्तु सः। गोत्रसाधारणं त्यक्ता योऽन्यदेशं समाश्रितः। तद्वंशस्यागतांशः प्रदातव्यो न संशयः। तृतीयः पञ्चमश्चैव सप्तमोवापि यो भवेत्। जन्मनामपरिज्ञाने लभेतांशं क्रमागतम्। यं परम्परया मौलाः सामन्ताः स्वामिनं विदुः। तदन्वयस्यागतस्य दातव्या गोत्रजैर्मही। जाता अनिष्या गर्भस्था पितृस्था येच मानवाः। सर्व्वे काङ्क्षन्ति ताम् वृत्तिमनाच्छेद्या ततस्तु सा।

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पुत्रं प्रतिपद्यौर्थ्यमित्यनुवृत्तौ वशिष्ठः। तस्मिंश्चेत् प्रतिगृह्णीते औरसः पुत्र उत्पद्यते स चतुर्थभागभागी स्यात्। यदि नाभ्युदयिकेषु प्रयुक्तः स्यात्। कात्यायनः। उत्पन्ने त्वौरसे: पुत्रे तृतीयांशहराः सुताः। सवर्णा असवर्णास्तु ग्रासाच्छादन भागिनः। बृहस्पतिः। क्षेत्रजाद्याः सुतास्त्वन्ये पञ्चषट्सप्तभागिनः।

अथ दत्तकः।

तत्र मनुः। माता पिता वा दद्यातां यमद्भिः पुत्रमापदि। सदृशं प्रीति संयुक्तं स ज्ञेयो दत्रिमः सुतः। उपपन्नो गुणैः सर्व्वैः पुत्रो यस्य तु दत्रिमः।

स हरेतैव तद्दक्‌थं सम्प्राप्तोऽप्यन्यगोत्रतः। गोत्ररिक्‌थे जनयितुर्न हरेत् दत्त्रिमः क्वचित्। गोत्ररिक्थानुगः पिण्डोव्यपैति ददतः स्वधा। वशिष्ठः। शोणितशुक्र-सम्भवः पुरुषः मातापितृनिमित्तकः। तस्य प्रदानविक्रयपरित्यागेषु मातापितरौ प्रभवतः। नत्वेकपुत्रं दद्यात् प्रतिगृह्णीयाद्वा। सहि सन्तानाय पूर्व्वेषां। नतु स्त्री पुत्रं दद्यात् प्रतिगृह्णीयात्। अन्यत्रानुज्ञानाद् भर्त्तुः। पुत्रं प्रतिग्रहीष्यन् वन्धूनाहूय राजनि च निवेद्य निवेसनस्य मध्ये व्याहृतिभिर्हुत्वा अदूरेवान्धवम सन्निकृष्टमेव प्रतिगृह्णीयात् सन्देहे चोत्पन्ने दूरेवान्धवं शूद्रमिव स्थापयेत्। विज्ञायते ह्येकेन च वहूंस्त्रायत इति। अदूरेवान्धवं सन्निहितमातुलादिकं असन्निकृष्टमेवाज्ञात गुणदोषमपि। अप्यर्थश्चकारः। सन्देहइत्यादि। वान्धवानामसन्निधानात् जाति सन्देहे शूद्रत्वेनाध्यवसितस्य संस्कारमनधिकृतस्य संस्कारहीनमेव स्थापयेत्। शूद्रोऽपि हि किल पुत्री भवतीति अभिप्रायः।

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अथापुत्रधनविभागः।

तत्र मनुः। संस्थितस्यानपत्यस्य सगोत्रात् पुत्रमाहरेत। तत्र यद्दक्‌थ जातंस्यात् तत्तस्मिन् प्रतिपादयेत्। पुत्रमाहरेत्। सगोत्रात् पुरुषात् सन्तानमुत्पादयेदित्यर्थः। वृद्धमनुः। अपुत्राशयनं भर्त्तुः पालयन्ती व्रतेस्थिता। पत्न्येव दद्यात् पिण्डं कृतस्नमर्थं लभेत वा। वृहस्पतिः। आम्नायस्मृतितन्त्रे च लोकाचारे च सूरिभिः। शरीरार्द्धं स्मृता भार्य्या पुण्यापुण्यफले समा। यस्य नोपरता भार्य्या देहार्द्धंतस्य जीवितं। जीवत्यर्द्धशरीरेऽर्थं कथमन्यः समाप्नुयात्। सकुल्यैर्विद्यमानैस्तु पितृमातृसनाभिभिः। असुतस्य प्रमीतस्य पत्नी तत् भागहारिणी। पूर्व्वं प्रमीताग्निहोत्रं मृतेभर्त्तरि तद्धनं। विन्देत पतिव्रता नारी धर्म्म एष सनातनः। जङ्गमं स्थावरं हेमरूप्यधान्यरसाम्बरम्। आदाय दापयेच्छ्राद्धं मासषाण्मासिकादिकम्। पितृव्यगुरुदौहित्रान् भर्त्तुः स्वस्त्रीयमातुलान्। पूजयेत् कव्यपूर्त्ताभ्यां वृद्धानाथातिथीन् स्त्रियः। तत् सपिण्डा वान्धवा वा ये चेस्युः परिपन्थिनः। हिंसुर्धनानि तान् राजा चौरदण्डेन शासयेत्। अथ नारदः। पुत्राभावेतु दुहिता तुल्य सन्तानदर्शनात्। पुत्रदुहिता चोभौ पितुः सन्तानकारकौ। मनुः। यथैवात्मा तथा पुत्रः पुत्रेण दुहिता समा। तस्यामात्मनि तिष्ठन्त्यां कथमन्यो धनम् हरेत्। वृहस्पतिः। सदृशा सदृशेनोढ़ा साध्वी शुश्रूषणे रता। कृताकृता वापुत्रस्य पितुर्धनहरी तु सा। कृता पुत्रिकाभावेन व्यवस्थिता। अथ वृहस्पतिः। भार्य्यासुतविहीनस्य तनयस्यमृतस्य च। माता रिक्‌थहरी ज्ञेया

भ्राता वा तदनुज्ञया । मनुः । अनपत्यस्य पुत्रस्य माता दायमाप्नुयात् । मातर्य्यपि च वृतायां पितुर्माता हरेद्धनम् । गौतमः । संसृष्टविभागः । प्रेतानां ज्येष्ठस्य । मनुः । पिता हरेदपुत्रस्य ऋक्थं भ्रातर एव च । त्रयाणामुदकं कार्य्यं त्रिषु पिण्डः प्रवर्त्तते । चतुर्थः सम्प्रदातैषां पञ्चमो नोपपद्यते । अनन्तरः सपिण्डाद् यस्तस्य तस्य धनं भवेत । अत ऊर्द्धं सकुल्यः स्यादाचार्य्यः शिष्य एव च । पैठीनसी । अपुत्रस्य स्वर्यातस्य भ्रातृगामि द्रव्यं तदभावे मातापितरौ लभेतां पत्नी वा ज्येष्ठा सगोत्रशिष्यसब्रह्मचारिणः । अपुत्रधनं पत्न्यभिगामीत्यादि विष्णुवचने भ्रातृसद्भावेऽप्यपुत्रधनस्य पत्न्यभिगामित्वं प्रतिपादितम् । तदपुत्रा शयनं भर्त्तुरित्यादि वृद्धमनुवाक्यपर्य्यालोचनया भर्त्तृशयनपालनव्रतकरणादिगुणान्विता या पत्नी तद्विषयं । या चैवंविधा न भवति तस्यां विद्यमानायां भ्रातृगाम्येव तद्धनं । यत्भरणं चास्य कुर्व्वीत स्त्रीणामाजीवनक्षयात् । रक्षति शय्यां भर्त्तुश्चेदाच्छिन्द्युरितरासु । तदिति भरणमात्रमिति शङ्खेनोक्तम् तद्व्यभिचारादिरहिताविषयम् । अव्यभिचारिणीमातृविषयं यत्र । याज्ञवल्क्यः । पितरौ भ्रातरस्तथेति । भ्रातृसद्भावे पित्रोरेवाधिकारउक्तः । तत् पितृपितामहाद्युपार्ज्जितधनविषयं । यत्र पितृद्रव्याविरोधेनोपार्जितं तत् पित्रोः सद्भावेऽपि भ्रातृणामेव । ततो दायमपुत्रस्य विभजेरन् सहोदरा । तुल्या दुहितरो वापि ध्रियमाणः पितापि वा । सवर्णा भ्रातरो माता भार्य्या चेति यथाक्रमम । तेषामभावे गृह्णीयुः कुल्यानां सहवासिनः । याज्ञवल्क्यः । पत्नी दुहितरश्चैव पितरौ भ्रातरस्तथा । तत्सुता गोत्रजोबन्धुशिष्यसब्रह्मचारिणः । एषामभावे पूर्व्वस्यधनभागुत्तरोत्तरः । स्वर्यातस्य ह्यपुत्रस्य सर्व्ववर्णेष्वयं विधिः । विष्णुः । अपुत्रस्य धनं पत्न्यभिगामि । तदभावे दुहितृगामि । तदभावे पितृगामि । तदभावे भ्रातृगामि । तदभावे भ्रातृपुत्रगामि । तदभावे सकुल्यगामि तदभावे सहाध्यायिगामि । तदभावे ब्राह्मणधनवर्ज्जं राजगामि । दुहितृदौहित्रानन्तरं । वृहस्पतिः । तदभावे भ्रातरस्तु भ्रातृपुत्राः सनाभयः । सकुल्या बान्धवाः शिष्याः श्रोत्रियाश्च धनार्हकाः । मृताऽनपत्यभार्य्यश्चेद्भ्रातृपितृमातृकः । सर्व्वे सपिण्डास्तद् दायं विभजेरन् यथांशतः । समुत्पन्नधनादर्द्धं तदर्द्धं स्थापयेत् पृथक् । मासषाण्मासिके श्राद्धे वार्षिके वा प्रयत्नतः । बह्वो ज्ञातयो यत्र सकुल्या बान्धवास्तथा । यस्त्वासन्नतरस्तेषां सोऽनपत्यधनं हरेत् । बौधायनः । प्रपितामहः पितामहः पिता स्वयं सोदर्य्या भ्रातरः सवर्णायाः पुत्रः पौत्रः प्रपौत्रस्तानविभक्तदायान् सपिण्डानाचक्षते । विभक्तदायानपि सकुल्यानाचक्षते । असत्स्वन्येषु तद्गामी ह्यर्थो भवति । सपिण्डाभावे सकुल्य

तदभावे पिताचार्य्योऽन्तेवास्यृत्विग्वा हरेत्। तदभावे राजा। नारदः। अभावे दुहितॄणां च सकुल्या बान्धवा स्तथा। ततः सजातिः सर्व्वेषामभावे राजगामि तत्। ब्रह्मस्ववर्ज्जितम्। अदायकन्तु ब्रह्मस्वं श्रोत्रियेभ्यः प्रदापयेत्। बौधायनः। ब्रह्मस्वं पुत्रपौत्रघ्नं हन्त्यादैकाकिनं विषम्। तस्माद्राजा ब्राह्मणस्वं नाददीत कदाचन। परं ह्येतद् विषं यद् ब्राह्मणमिति। वृहस्पतिः। येऽपुत्राः क्षत्रविट्शूद्राः पत्नी भ्रातृविवर्जिताः। तेषां धनहरो राजा सर्व्वस्याधिपतिर्हि सः। शङ्खलिखितौ। परिषद्गामि श्रोत्रियद्रव्यं न राजगामि। न हार्य्यं राज्ञा देवब्राह्मणसंस्थितम्। न निक्षेपोपनिधिक्रियाक्रमागतं। न बालस्त्रीधनान्येवं ह्याह। न हार्य्यं स्त्रीधनं राज्ञा न बालधनानि च। नार्थाः षडागमं वित्तं बालानां पैतृकं धनं। मनुः। बालदायागतं रिक्थं तावत् राजानुपालयेत्। यावत् स स्यात् समावृत्तो यावद्वातीत शैशवः। विष्णुः। बालानाथस्त्रीधनानि राजा परिपालयेत्। शङ्खलिखितौ। रक्षेद्राजाबालानां धनान्यप्राप्तव्यवहाराणाम्। श्रोत्रियवीरपत्नीनां प्रक्षीणस्वामिनि राजगामिनि भवन्ति। पुत्राधिकारे बौधायनः। तेषामप्राप्तव्यवहाराणामंशान् सोपचयान् सुगुप्तान् निदध्युराव्यवहारप्रापणात्। कात्यायनः। प्रोषितस्य हि यो भागो रक्षेयुः सर्व्व एव तम्। बालपुत्रे मृते रक्ष्यमृक्थं तत्तत्तुबन्धुभिः। पौगण्डात् परतस्तत्तु विभजेरन् यथांशतः। बालपुत्रे बालः पुत्रः यस्मिन् सः। पौगण्डः अतिबालो व्यवहारानभिज्ञः। विष्णुः। यश्चार्थहरः स पिण्डदायी। स्मृतिः। योधनमाददीत स तस्मै श्राद्धं कुर्य्यात् पिण्डं च त्रिपुरुषं दद्यादिति। वृद्धमनुः। भ्राता वा भ्रातृपुत्रो वा सपिण्डः शिष्य एव। सहपिण्डक्रियां कृत्वा कुर्य्यादभ्युदयं ततः। वशिष्ठः। पुत्रः पितृवित्तालाभेऽपि पिण्डं दद्यात्। अथ विष्णुः। वानप्रस्थधनमाचार्य्यो गृह्णीयात् शिष्यो वा। याज्ञवल्क्यः। वानप्रस्थयतिब्रह्म-चारिणाम् ऋक्थभागिनः। क्रमेणाचार्य्यसच्छिष्यधर्म्मभ्रात्रेकतीर्थिनः।

MADANA PARIJATA.

PARTITION OF HERITAGE.

CHAPTER I.

PERIOD AND MODE OF PARTITION.

1. As divided brothers are entitled to perform Sradha separately, after the Chapter on Sradha, the partition of heritage is determined.

Narada says: "Where a partition of the paternal property is instituted by the sons, it is called by the learned, partition of property, a title of law." The word 'paternal' here is symbolical of grand-paternal and the like. 'Tat' is an adjective.

Four periods of partition.

2. There are four periods of partition. One is during the lifetime of the father when he desires to partition. The second is when the mother is past child bearing and the father has lost the desire for sexual pleasure and also for worldly things and the sons desire partition, though the father be unwilling. Another is when the mother is not past child bearing and the father is unwilling, when he is too old, addicted to vice or afflicted with incurable disease and the sons desire partition. The last is after the death of the father.

[illegible] period of partition.

3. The first is thus described by Yajnavalkya: "A father when making partition, can divide it among his sons as he pleases, either giving to the eldest the best share or in such wise that all share equally."

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Unequal division.

4. Though unequal division is to be found in the Shastras still as it should not be practised on the strength of the text (of Manu): "Practise not that which is abhorred by the world though it is ordained in the sacred books, for it does not secure spiritual bliss." The Smriti says: "The practising of Niyoga and the sacrifice of a barren cow, as well as partition with deductions of eldest brother's preferental shares, are not to be found at the present time." But if the father on rare occasions, makes an unequal partition it does not become invalid. So says Yajnavalkya: "A lawful distribution by father in smaller or larger shares is valid." 'Lawful' means that if such partition is according to the

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* Here follow a dissertation on the preferential share of the eldest which is omitted as unimportant.

Shastras it is valid. If it is not in accordance with the Shastras, it may be annulled. So Narada says: "A father who acts against the Shastras has not the power to partition the property." When any mode of unequal partition is not abhorred by the world, such unequal division stands good. The text of Narada: "Two shares let the father keep for himself when partitioning his property" refers to his self-acquired property. So says Vasista: "If one of these persons has gained something by his own effort, he shall receive a double share." The words 'of these persons' mean of father, brother and the like, who are entitled to the heritage.

Second period of partition.

5. Narada thus speaks of the second period of partition, after premising "shall divide the property equally:" "when the mother has ceased to menstruate and the sisters are married or when the father's sexual desire is extinguished and he has ceased to care for worldly interests." *Prattasu* (in the text) means are married. *Ramana*, means sexual enjoyment When desire for such enjoyment is extinguished is the meaning. *Spriha* means desire for worldly things.

Third period of partition.

6. The third period is thus spoken of by Sankha: "When the father is without desire, old, when his intellect is perverted and when he is afflicted with long-standing disease." 'Without desire' &c.: (with reference to this text comments) 'when his intellect is perverted' means when he is addicted to unlawful practices.

Fourth period of partition.

7. The fourth period is thus spoken of by Yajnavalkya: "After the decease of the parents let the sons make equal division of the property and of the debts." 'Parents' means after the death of both mother and father, the property *i.e.*, their estate and their debts should be equally divided. This is the meaning After the death of the father or during his lifetime, when on account of his being tainted with the taint of being an outcast or the like, the sons are entitled to partition, in that case a particulars rule is mentioned by Yajnavalkya thus:

sisters should be given fourth share.

8. "Those of the brothers whose ritual ceremonies have not been performed shall have them completed by others whose ritual had been gone through. So in like manner as to the ritual of sisters (each of the brethren) devoting a fourth part of his share." 'Whose ritual ceremonies have not been performed' means the ceremonies ending with marriage of those brothers and sisters have not been performed, should be performed and then partition should be made. 'Sisters also &c.':—the meaning of the passage is that having got the unmarried sisters married, they (the sisters) should be given a fourth share. From what? From one's own share.

Mode of calculation of the fourth share.

9. Here from one's own share means from the share which a son receives according to his caste under the text "they shall have three, two or one share &c." The following is the mode of division When a Brahmana has one wife and one son and one daughter, the father's property should be divided in two equal parts and one of them should be divided in four parts of which one should be given to the daughter and the rest the son should take. When there are two sons and one daughter, the father's property should be divided into three parts and one of these parts should be again divided in four parts. The daughter should be given one of these fourth parts and the rest should be divided in equal halves by the sons. The same rule should be followed when there are many sons and many daughters. When there are one son and two daughters, the father's property should be divided into three parts and one of these should be divided into four shares Giving to the daughters each, one of these fourth part shares, the son should take the rest. This rule should be applied to brothers and sisters of the same caste when their numbers are unequal. * * *

Fourth share of sisters over and above marriage expenses.

10. Some are of opinion that the rule is that out of the share given to the unmarried sister in the mode mentioned before, her marriage expenses should be defrayed and not that out of the entire common property the marriage expenses having been defrayed, she should again be given a fourth share. This opinion should be disregarded as not being approved by Medhatithi, Mitakshara and others, or the decision of this question may be according to the custom of the country. The time of partition and the above matters which arise out of it, have been described. Now for the determination of the rule of the inheritance the primary and secondary sons are described.

CHAPTER II.

PRIMARY AND SECONDARY SONS INCLUDING ADOPTED SONS.

(Here quotes Yajnavalkya II 128-131.)

Sons of wives of equal and inferior castes also Aurasa.

1. The Aurasa son is one born of a wife of the same caste married according to approved legal form. He is the primary son. So also is the son of a wife of the same caste married in Asura and the like form, as also the son of a Brahmana by a wife of the Kshatriya or other inferior caste in the proper order of castes, such as the Murdha-

* Next follow a discussion of division when the children are of different caste, which I omit.

vasikta, the Ambastha, and the Nishada otherwise called the Parashava, likewise the son of the son of a Kshatriya by a wife of the Vaisya and other inferior castes. Such as the Mahisya and the Ugra; as well as the son of a Vaisya on a Sudra woman called the Karana; all these are Aurasa sons. Thus the Dwamushyana is also an Aurasa son of the begetter. * * * * *

Adopted son.

2. The Dattaka is also of the same caste. Manu says: "That boy equal (by caste) whom his mother or his father affectionately gives with a libation of water in times of distress as his son must be considered as an adopted son." 'Equal' (in the text) means of equal caste.

— power to giv in adoption.

3. When the husband is absent in a distant country or is dead, when in a time of distress, the mother has alone the power to give in adoption; likewise when the mother is dead or insane, in a time of distress, the father alone has the power to give in adoption. Otherwise both have power acting together. From the mention of distress, it should be understood that a son should not be given in adoption without distress. When a son is given without distress, fault attaches to the giver but not to the taker.

Adoption of an only or eldest son.

4. An only son should neither be given nor taken in adoption. So says Vasista: "Let him not give or receive an only son." Likewise the eldest son should not be given.

5. Vasista thus describes the mode of taking in adoption: "He who desires to adopt a son shall assemble his kinsmen, announce his intention to the king, make burnt offerings in the middle of the house, reciting the Vyahritis and take (as a son) one whose relatives are not far off and just the nearest among kinsmen." (In this text) Nibeshana means one's own house. "Whose relatives are not far off" has been mentioned in order to prohibit the adoption of one who is very far removed by country and language.

The mode applies to Kritrima and the like sons.

6. The above rule of the mode of adoption applies to the case of the son purchased, the son self-given and the son made (kritrima.) * * †

Adopted son takes one fourth share when there is an after born son. So also Kritrima and others.

7. Katyayana says: "If a legitimate son be born, the other kinds of sons of the same caste are partakers of a fourth share, but if they are of a different caste, they are only entitled to food and raiment." (In this text) the words 'of the same caste' mean Kshetraja, Dattaka, Krita, Kritrima, Svayamdatta and Apabidha sons; 'of a different

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* Next follow a dissertation on Kshetraja and Gudhotpanna and Paunarbhava sons which is omitted.

† Here follow descriptions of Krita, Kritrima, Svayamdatta, Gudhotpanna, Apabiddha sons which are omitted.

caste" means Kanina, Gudhotpanna, Sahodha and Paunarbhava.

CHAPTER III.

RIGHTS OF THE AFTERBORN SON AND NEPHEW.

1. About the son born after partition, Manu says: "A son born after partition shall alone take the paternal estate." The word *Pitryam* (paternal) here is an Ekshesha compound and means both paternal and maternal. So (Vrihaspati says): "What is acquired by the father himself after having become separated from the sons, belongs to the son born after partition; those born before are ordained to be not entitled to it." So also (Manu says): "Or if any of the other sons be reunited with the father, he shall share with them" Those having separated from the father again reunite with him are called the *Sansrista*. The son born after partition shares with them.

Right of the son born after partition.

2. When the father or the brother is dead and the pregnancy of the mother or of the widow of the brother is not manifest and the rest of the brothers divide and a son is born afterwards of such a pregnant woman, what share should such a son get? With reference to this question Yajnavalkya says: "Or a share may be allotted to him from the estate as it is, after allowing for income and expenditure." * * * *

The right of the afterborn nephew.

3. When the pregnancy is manifest of the mother or of the widow of a brother, the partition should be made after delivery. So says Vasista: "Now follow the rules regarding partition among brothers. And let it be delayed until those widows who have no offspring (but are supposed to be pregnant) bear sons." Partition should be made, after waiting till those widows, whose pregnancy is manifest, get sons *i.e.*, till their delivery.

Partition should be delayed till delivery of pregnant widow.

4. When ornaments and the like are given by the mother or the father to the divided son, the son born after partition should not object. So says Yajnavalkya: "Whatever property may be given by the parents to any child, shall belong to that child." By parity of reasoning, if something be given by father or mother to any of the sons before partition, it should belong to him. Therefore if any thing be given to one, the others should not object.
* * * * †

Whatever is given by the parents to a son belongs to him.

* Here follows a paraphrase of the text which is omitted as unimportant.

† Next follow a dissertation on partition among sons by mothers of different caste which is omitted.

CHAPTER IV.

ON THE RIGHT AND SHARE OF GRANDSONS IN GRANDPATERNAL PROPERTY.

Grandsons takes *per stirpes*.

1. On this subject Yajnavalkya says: "The allotment of shares among sons of different fathers is according to the fathers of their deceased fathers" Sons of different fathers mean brother's sons born of different brothers by their wives. Their share in grand-paternal property is to be determined having regard to their fathers The purport is this If there are three brothers and one of them has one son, another has two and the third has three sons, then these six do not take the grand-paternal property dividing it into six shares; but the grand-paternal property should be divided into three equal shares for the three brothers and the only son of the first brother should take his father's share, and two sons of the second brother should take their father's share and similarly in the other case. If some of the brothers should have died after begetting sons and some be living, the brothers should take their own shares and the sons of the deceased brothers should take their fathers' shares in the above mode. This is the meaning.

Equality of right of son aud grandson in grandpaternal property.

2. A special rule is mentioned in the case of partition with the father of grand-paternal property by him (Yajnavalkya): "The ownership of both father and son is equal in land, a corrody or chattel acquired by the grandfather." Here land means rice field and the like *Nibandha* (corrody) means what is settled as receivable by persons conversant with the matter by computation as so many leaves receiable from a plantation of betel pepper or so many nuts from an orchard of areca. 'Chattel' means gold, silver and the like. In all such grand-paternal property, the ownership of father and son is equal Therefore in such a case the rules that partition should take place at the desire of the father only during his life time, that the father has two shares, that the partition is according to fathers and the like have no application. There is likewise equality of ownership of the grandson of a Sudra born of a female slave also but in regard to partition there is a distinction. The special rule of partition in his case should be as is prescribed at the end of the rules for the partition for the afterborn son.

3. The objector says that the text "the allotment of shares among sons of different fathers is according to the fathers," declares that the right to share in grandpaternal property is through the father and not in one's own right and thus it is inconsistent with the concluding portion of the

text "in land acquired by the grandfather &c." which says that in grandpaternal property the ownership of father and son is equal. The answer is that there is no inconsistency. The text "the allotment of share among sons of different father &c" refers to the mode of partition of the paternal estate and that is made clear by the portion of the text "the allotment of shares is according to the fathers." The right to share of grandsons arises through their father and thus when the father is alive that cannot arise as his ownership is by birth. But when their father is dead and his right ceases by his death, the right to share of grandsons arises. Thus after the death of their father, the mode of division of grandpaternal property by grandsons is regulated by the text "the allotment of shares among sons of different fathers &c" The text 'land acquired by the grandfather &c' refers to the case when both father and son are alive with reference to the right of the grandson and this is indicated by the portion of the text "the ownership of both father and son is equal," because the dead can have no ownership and if one of these two persons be considered as not living, the text 'the ownership of both father and son is equal' becomes inappropriate.

4. When there are three brothers and one of them has one son, the second two sons and the third three and all the fathers and sons are alive, the division shall be made according to the rule laid down before But when among the descendants of one son, both sons and grandsons are alive, and among the descendants of the other, only sons, and among the descendants of the third, only grandsons are alive, in that case the sons of the father who is alive obtain the paternal wealth on the strength of the text 'land that is acquired by the grandfather &c' When the sons have died before and the grandsons exist, then the grandsons shall take their own shares by virtue of the text "among sons of different fathers &c"

No partition at the will of the grandson.

5. The right to share of grandsons by virtue of the text "in land acquired by the grandfather &c.," which contemplates the case of those whose fathers are dead, arises when the grandfather is dead and thus there may be partition at the will of the grandfather or at the will of his son but not at the will of the grandson, when his father is alive inasmuch as it has been demonstrated while treating of the time for partition that there may be partition only at the will of the father or, under some circumstances, at the will of the son.

CHAPTER V.

DETERMINATION OF THE MOTHER'S SHARE.

Mother entitled to equal share.

1. On this subject, Yajnavalkya says: "If he give equal shares, such of his wives to whom Stridhana had not been given by their husbands or father-in-law, shall also equally share." The word 'equal' here means neither less nor more or it may mean having reference to the text "they take four, three, two and one shares respectively," equal to the share in conformity to the order mentioned in the said text. In this manner, the father when he of his own will makes all his sons equal sharers should also make his wives equal sharers with them. When the sons of the Brahmani wives are made equal sharers, their mothers should also obtain equal shares with their sons. When the sons beginning with the Murdhavasikta receive three, two and one shares in due order, their mothers obtain shares equal to those of their sons.

Stridhana given should be deducted from the share.

2. The exception 'as have not received Stridhana, &c.' means that when ornaments and the like Stridhana have been given, the mode mentioned in the text on the Chapter on Supersession "if any have been assigned, let him allot half" should apply. In the mode mentioned in the text 'if any have been assigned, let him allet half' half means a share and not an exact moiety. The share of the wife should be made equal to that of the son by giving her the amount of wealth by which the Stridhana falls short of a son's share. The objector says, if it be so, then indirectly Stridhana becomes partible and then it becomes inconsistent with texts declaring the impartibility of Stridhana. But that is not so, for where there is an exception, it bars the general rule of the impartibility of Stridhana. When there is no exception there is no bar. Here the texts "to whom Stridhana had not been given &c.' and 'if any have been assigned, let him allot half' should be read together as declaring an exception to the general rule.

Wife's preferential share

3 When the father makes an unequal division on the strength of the text "either giving to the eldest the best share &c." then the wives do not get the best share but get equal shares out of the entire wealth after deducting the said best share. There in their case also they should get the following deduction allowed before partition as mentioned by Apastamba: "the furniture in the house and the ornaments belong to the wife." Paribhanda means household utensils like the millstone, the mortar, the pestle, the winnowing basket, &c.

4. On a partition made by the sons after the death of the father, the mother gets an equal share. So says Yajnavalkya: "If partition be made after the father's death, the mother shall also have an equal share." After the father's death also the provisions contained in the two texts, "to whom S'ridhana had not been given by their husbands or father-in-laws &c." and "if any have been assigned let him allot half &c." should apply because of parity of reasoning and because no exception is mentioned. This is the opinion of Vijnaneswara, Dhareswara and others. Or in the text "if any have been assigned, let him allot half" the word half means an equal half and thus it can be said that when there is Stridhana, (the mother) should be given half of a son's share *i.e.*, when the son's share consists of ten *Nishkas* the mother's share would be five *Nishkhas*. The ornaments of the brother's widows are not divisible. Likewise whatever ornaments have been given before to women, who are entitled to shares, those also are not divisible. This will be made clear in the Chapter on impartible property.

Mothers entitled to equal shares on partition after father's death, with deduction for Stridhana but not for ornaments.

5. When property acquired by the grandfather is divided by father and son, then the widow of the grandfather who has a son takes an equal share in the mode mentioned before, because the text "the mother shall also have an equal share" and because the property was acquired by the grandfather. If the wives of the grandfather are sonless, then they obtain their own ornaments and affectionate gifts and not shares.

Grandmothers with sons entitled to equal shares.

6. Likewise in the partition of grand-paternal property, the mother does not obtain a share but only gets her own ornaments and the like.

In grand paternal property mother gets no share.

7. The text "if he give equal shares, his wives should be made equal sharers" and the text, "if partition be made after the father's death, the mother shall also have an equal share" refer to property in which there is ownership in which the father has predominant interest, and the predominant interest of the father and also ownership attach to property obtained by the father by partition or acceptance and the like, and such property is paternal property which goes to the sons.

8. What is the rule as regards maternal property? With regard to this question Yajnavalkya says: "So the daughters of what is left of the mother's (estate) after paying her debts; in their default the issue." The maternal property, after paying the mother's debts, the daughters take by dividing it among themselves. In that rule there is the following distinction. When there are both married

Succession to mother's estate.

and unmarried daughters, the unmarried daughters alone take. On failure of unmarried daughters, those that are poorer than the others take So says Gautama: "A woman's separate property goes to her unmarried daughters and on failure of such, to unprovided daughters" *Apratta* in this text means unmarried 'unprovided' means poor "In their default" *i e*, in default of daughters and also in default of their daughters, the issue take Here the daughter takes first and then her issue. This is the meaning as shall be described hereafter.

CHAPTER VI

ON THE HEIRS OF THE SEPARATE PROPERTY OF A CHILDLESS WOMAN.

Succession to Stridhana in approved marriage.

1. Yajnavalkya says: "Her kinsmen take it, if she die without issue That property of a childless woman married in the form denominated Brahma or in any of the four (unblamed modes of marriage) goes to her husband, but if she leave progeny, it will go to her daughters, and in other forms of marriage, goes to her father" 'That property' of the childless woman, *i e*, of the woman without issue like daughter, daughter's son, son and grandson, Bandhavas *i.e*, husband and the like take. The estate of a woman, who had been married in any one of the forms of marriage, Brahma, Daiva, Arsha and Prajapatya, is taken by her husband, in her default by the nearest in her husband's family and in their default, by the nearest in her father's family. This is the purport.

Succession in disapproved marriage.

2. When the woman had been married in any one of the forms of marriage, Asura, Gandharva, Rakshasha and Paisacha, her estate is taken by the parents, first by the mother and in her default, by the father and in his default, by the nearest among the relations in father's family and in their default, by the nearest relations in the husband's family.

Daughter, and their daughter's daughter take *per stirpes*.

3. In all kinds of marriage, if she has children, then her estate belongs to the daughters, *i.e.*, to her daughters and daughter's daughters. Here if the word daughter means only daughter then the word daughter would be a repetition of what is mentitioned in the text, "the daughters take the residue of their mother's property." Among daughter's daughters also when there are unmarried and married ones, the unmarried one takes; when there are both unprovided and provided ones the unprovided one takes. When the daughters' daughters are children of different mothers, the partition should be according to their

mothers (*per stirpes.*) So says Gautama: "There is special division according to class in the lines of father, mother or sisters." When there are both daughters and daughter's daughters, the daughter's daughters should be given something, out of affection, and not a share. So says Manu: "Even to the daughters of those (daughters) something should be given as is seemly, out of the estate of their maternal grandmother out of affection" Daugters of 'those' means of daughters.

In default of daughter's daughters, daughter's sons take, as says Narada; "Daughters divide the property of their mother; in their default, their issue" The mother's estate is taken by the daughters. 'In their default' *i.e.*, in default of daughters and daughter's daughter, their issue, *i.e.*, the daughter's sons take. This is the meaning. Though the word Anvaya is in the nominative singular, still by it only daughter's sons are meant and not the issue of the daughter's daughters, as they are more remote than the daughter's son

In default of daughter's daughter, daughter's son takes.

4 In default of daughter's sons, the heirs are in order son and grandson and the like, that are intended by the word *Anvaya* (issue) in the text "the daughters take the residue of their mother's property after payment of her debts, in their default, their *Anvaya* (issue)." With this in ention Manu says: "When the mother has died, all the uterine brothers and the uterine sisters shall equally divide the mother's estate." (The meaning is that) the sisters, *i.e.*, the daughters of the mother, and in their default, the heirs up to the daughter's son and in their default the uterine brothers take. The sons of the deceased woman, and not her stepsons, and in their default, the grandsons take This is the purport. In the text "all the uterine brother and uterine sister shall equally divide," the use of the word uterine is for the purpose of excluding half-brothers and sisters.

In default of daughter's son, son and grandson take.

5. In default of her own son, her rival wife's son takes. When the daughter of a rival wife is of higher caste than the son of another co-wife, the stepdaughter of the superior caste takes and in her default the daughter's son of the like description. So says Manu: "Whatever property may have been given by her father to a wife (who has co-wives of different castes) that the daughter of the Brahmani wife shall take or that daughter's issue." It is mentioned in the text that the daughter takes the wealth of a woman. The words daughter and woman are used absolutely without reference to each other. From that and as the words daughter and woman are not relative, the stepmother and stepdaughter may be considered as included in the those words. The word Brahmani is used to indicate one of a superior caste. Thus the estate of a Sudra woman

Next stepson takes.

is taken by the Brahmani, the Kshatriya and the Vaisya daughters. The estate of a Vaisya woman is taken by the Brahmani and the Kshatriya daughters. The estate of the Kshatriya woman is taken by the Brahmani daughter. As it is stated that the stepdaughters of highter caste are heirs, the stepdaughters of inferior caste do not take when there is a stepson of superior caste.

6. On the failure of the son and the grandson, the brother and in his default, his sons and thus in due order the heirs beginning with the brother take.* Thus should Stridhana other than Sulka should be divided. The Sulka is taken by the uterine brothers alone. So says Gautama: "The sisters fee belongs to her uterine brothers, if her mother be dead" The Sulka of the sister is taken by the brothers, even when the heirs beginning with the daughter and ending with the granson exist.

Next follows a discussion on the propety of a girl who died before marriage and of the right of the husband to take the wife's property in distress, which is omitted as unimportant and which is similar in import to the Mitakshara.

CHAPTER VII.

ON THE DEFINITION OF STRIDHANA.

Yajnavalkya's text and Adya explained.

1. Yajnavalkya thus defines Stridhana: "What was given to a woman by the father, mother, husband or a brother, or received by her at the nuptial fire or presented to her on her husband's marriage to another wife and the like is denominated a woman's property, and also what is given by Bandhus and the gift subsequent." 'Received at the nuptial fire' means what is given by the maternal uncle and the like near the nuptial fire. Adhivedanika is thus defined: "To a woman, whose husband remarries a second wife, let him give an equal sum (as compensation) for supersession, provided no separate property have been bestowed on her; but if any have been assigned, let him allot half." She who is superseded is called Adhivinna. Such a wife is the Adhavinna wife. She should be given for supersession an equal sum. The first wife should be given the same amount of ornaments and the like as are given to the second wife. Here a special rule is mentioned by saying 'provided no separate property have been bestowed.' The meaning of the latter portion of the text has been explained in the Chapter on mother's share. By the prefix *Adya* (and the like) in the word *Adhivedanikadya*, is meant what gained by spinning of cotton, purchase, partition, acceptance of gift, finding of treasure and the like.

* This apparently refers to a woman married in a disapproved form.

Katyayana's text.

2. Katyayana says: "Whatever is given to women at the time of their marriage before the sacred fire is denominated property given before the nuptial fire. What a woman receives while she is carried from her paternal abode to the house of her husband is called the property of a woman given at the bridal procession. Whatever is given through affection by the mother-in-law or by the father-in-law on the occasion of her salutation by touching the feet is called Pritidatta Whatever is received by a married woman or by a maiden from the husband or at the husband's house or from the brother or from the parents is called Saudayika. Whatever is received by a woman after marriage from her husband's family or from her father's family is called Anvadheya"

CHAPTER VIII.

ON SUCCESSION TO THE ESTATE OF A SEPARATED PERSON WHO DIES WITHOUT LEAVING A SON OR GRANDSON.

Yajnavalkya's text on succession explained.

1. On this subject Yajnavalkya says: "The *Patni* (lawfully wedded wife) and the daughters also, both parents, brothers likewise, and their sons, gentiles, cognates, a pupil and a fellow-student, on failure of the first among them, the next in order is the heir to the estate of one who departed for heaven, leaving no male issue." This rule extends to all classes." In this text *Patni* means married wife. The singular number is used, with reference to caste. When there are wives of the same and of different castes, they take by dividing the estate according to the rule laid down in the text "have four shares, or three or two or one &c"

After widow daughter takes.

2. On failure of the wife, the daughter takes. So says Katyayana: "Let the widow succeed to her husband's wealth provided she be chaste; and in default of her, the daughter inherits, if unmarried."

Unmarried, unprovided and provided daughters take in order.

3. By the mention of the qualification 'if unmarried' it is indicated that when there are both married and unmarried daughters, the unmarried one takes and in her default, the married daughter. Among the married daughters also, the poor one takes first and in her dafault, the wealthy daughter, as the reason of the text of Gautama: "a woman's separate property goes to her unmarried daughters and on failure of such, to poor unprovided married daughters" applies equally to the paternal estate.

Daughter's son takes next.

4. On failure of daughters, the daughter's son takes. So says Vishnu: "If a man leaves neither son nor son's

son nor issue, the daughter's son shall take her wealth. In the matter of the performance of the Sraddha of the ancestor, the daughter's sons are regarded as son's sons." This meaning may also be inferred from the use of the particle *cha* (and) in "and the daughters also" in the text of Yajnavalkya

Next mother and then father takes.

5. On failure of the daughter's son *Pitarau* (the parents) inherit Though the word Pitarau is formed as a compound of the words mother and father, still the order of the two words in the formation of the compound word should apply in the case of inheritance also. From that the mother takes first and in her default, the father.

6. The order of heirs that is prescribed in the entire passage " the lawfully wedded wife and the daughters also &c." in its concluding portion "on failure of the first among them, the next in order is the heir" has been all described by us in the Subodhini Tika of the Mitakshara and is not again described here, to avoid prolixity

After father full-brother and next half-brother takes.

7. On failure of the father, the brothers take Among them also the uterine brothers take first, because they being born of the same mother are nearer On failure of uterine brothers, the half-brothers take, because of their special nearness of relationship (from the text of Manu · "Always to that relative who is nearest to the deceased Sapinda, the estate shall belong" The meaning of this text is that the estate goes to the nearest Sapinda, who is nearest related by particles of body.

Next sons of full brothers and after them sons of half-brothers take.

8. On failure of both descriptions, their sons, *i.e.*, the brothers' sons take. Among them, also the sons of the uterine brother take first and in their default, the sons of the half-brother.

9. When on the death of one brother, another of his brothers becomes one of his heirs, on the strength of the text "the lawfully wedded wife and the daughters, &c" and after inheriting dies before partition, leaving sons, then his sons take their father's share by virtue of the text: "the allotment of shares is according to the fathers," because their father died after inheriting

After brother's son, grand-mother, grand-father, his son and grandson, great-grand-mother &c, take in order.

10 On failure of brother's sons, the *Gotrajas* (gentiles) take. By the word Gotraja are indicated the paternal grandmother, the paternal grandfather, the sons of the grandfather and their sons and in their default, the heirs beginning with the paternal great-grandmother and in their default, the Samanodakas. Among them the order is as follows.

Order of succession.

11. In default of the brother's son, the paternal grandmother and in her default, the paternal grandfather takes.

On the analogy of the rule that after the mother, father takes, the grandfather takes after the grandmother.

Full blood takes before half-blood among sons of grand-father.

12 As the brothers take after the father, similarly after the paternal grandfather, his sons take. Among them also the distinction between full-blood and half-blood applies and the sons of the father's own mother take first and in their default, the sons of the father's stepmother

13. On failure of them, the sons of the paternal uncle take on the analogy of the brother's sons

14. On failure of them, the paternal great-grandmother takes; in her default, the paternal great-grandfather; in his default, his sons; in their default, their sons, on the analogy of the brother's sons, take. In this manner the agnates up to the seventh degree take

15 Thus on failure of agnates to the seventh degree, the Samanodakas take. Among them also the preference on account of propinquity in the manner mentioned above should be observed

On failure of Gotrajas, Bandhus take:

16. On failure of Gotrajas, the Bandhus are entitled to the inheritance, Bandhus are of three descriptions: one's own Bandhus, the father's Bandhus and the mother's Bandhus as are described by Vriddha Satatapa: "The sons of his own father's sister, the sons of his own mother's sister and the sons of his own maternal uncle are known as his own Bandhavas; the sons of the father's father's sister, the sons of the father's mother's sister and the sons of the father's maternal uncle are known as the father's Bandhavas; the sons of the mother's father's sister, the sons of the mother's mother's sister and the sons of the mother's maternal uncle are the mother's Bandhavas." Among them also, first one's own Bandhus are the heirs, because of their propinquity and because of the order in which they are mentioned in the text. In their default, similarly the father's Bandhus and in their default the mother's Bandhus take.

Heirs after Bandhus.

17 On failure of Bandhus, the Acharya takes and in his default, the pupil. So says Apastamba: "On failure of sons, the nearest Sapinda takes. On failure of them, the spiritual teacher. On failure of the spiritual teacher, a pupil shall take."

18. On failure of the pupil, a fellow-student who has been invested with the sacred thread or taught by the same teacher. On failure of fellow-students, learned Brahmanas take the wealth as says Gautama: "Learned Brahmanas take the heritage of a Brahmana, who dies without issue." By Srotriya is meant a Brahmana who, studies the same Shakha of the Veda. In his default, a Brahmana who is near shall take. So says Manu: "On failure of all heirs, Brahmanas (who are) versed in the three

Vedas, pure and self-controlled ; shall share the estate, thus the law is not violated." The property of a Brahmana the King should never take. So says Narada : "The property of a Brahmana on his death, if there be no heir, should be given to a Brahmana ; otherwise the King becomes tainted with sin." Manu says : "The property of a Brahmana must never be taken by the King ; that is a settled rule." The property of persons of Kshatriya or of any superior caste, on failure of all heirs ending with the fellow-student, is not taken by a Brahmana but is taken by the King. So says Manu : "But the property of men of other castes the King may take on failure of all heirs.',

Succession to the estate of ascetics.

19. To the general rule of inheritance by which the heirs succeed in the order beginning with the son, an exception is stated. Yajnavalkya says : "The heirs to the property of a hermit, of an ascetic and of a student in theology are in order the preceptor, a virtuous pupil and a spiritual brother and one belonging to the same hermitage." A student in theology is a perpetual student, who does not enter the order of a house-holder. A virtuous pupil is one who has the qualities of hearing and meditating on spiritual philosophy. A spiritual brother is one who has been acknowledged as a brother. *Ekatirthi* means a hermit belonging to the same hermitage, *i e*, who lives near his own hermitage. One who is a spiritual brother and also belongs to the same hermitage is *Dharmabhratekatirthi.* In this text, the word 'order' means inverse order.

Estate of ascetics defined.

20 The property of a hermit is thus defined : "Let him make hoard of things sufficient for a day, a month, six months or a year and in the month of Asvin he should abandon the residue of what has been collected " Property, food and the like, acquired as aforesaid is taken by the spiritual brother belonging to the same hermitage. The property of a Yati or ascetic, which consists of clothes, books and the like, is taken by the virtuous pupil. The property of a perpetual student, which consists of clothes and the like, is taken by the preceptor

The Chapters on reunion, exclusion from inheritance, impartible property and supplementary provisions about partition are omitted, as they follow very closely the Mitakshara and contain nothing new.*

* In the Chapter on Reunion the Madan Parijata says that the rule, the uterine brother though not reunited takes does not apply to uncles of the whole-blood. The passage runs thus "Some say that by parity of reasoning the distinction between full-brothers and half-brothers should apply to uncles of the whole-blood and half-blood. That is not proper "

In the chapter on supplementary provisions, it cites Narada Ch. 19 V. 42-43. (See Vol I, p 417) according to which separate performance of religious duties and business transactions constitutes partition.

मदनपारिजातः।

अथाष्टमः स्तवकः।

I

विभक्तानामेव पृथक् पृथक् श्राद्धाधिकाराच्छ्राद्धस्तवकानन्तरं दायविभागो निरूप्यते। तत्र नारदः। विभागोऽर्थस्य पित्र्यस्य पुत्रैर्यत्र निरूप्यते। दायभाग इति प्रोक्तस्तद्विवादपदं बुधैः। पित्र्यस्येति पितामहाद्युपलक्षणम्। तदिति विधेयविशेषणम्। चत्वारः काला विभागस्य जीवत्येव पितरि पितुर्यदा विभागेच्छा स तावदेकः। निवृत्तरजस्कायां मातरि स्त्रीसुखानभिलाषिणि द्रव्यनिस्पृहे च पितरि पितुरनिच्छायामपि यदा पुत्रेच्छा सोऽन्यः। सरजस्कायामपि मातरि अनिच्छत्यपि पितरि तस्मिन् वृद्धे अधर्म्मवर्त्तिनि अचिकित्सितरोगग्रस्ते सति यदि पुत्रेच्छा सोऽन्यतरः। पितृमरणानन्तरमपर इति। तत्र प्रथमपक्षमाह याज्ञवल्क्यः। विभागञ्चेत्पिता कुर्यादिच्छया विभजेत्सुतान्। ज्येष्ठं वा श्रेष्ठभागेन सर्व्वे वा स्युः समांशिनः। * * * * *

एवं विषमविभागस्य शास्त्रसिद्धत्वेऽपि लोकविरुद्धत्वादस्वर्ग्यं लोकविद्विष्टं धर्म्ममप्याचरेन्न तु इति वचनान्नायं विभागक्रमो नानुष्ठेयः स्मर्य्यते। यथा नियोगधर्म्मो नानुबन्ध्यावधोऽपि वा। तथोद्धारविभागो हि नैवं सम्प्रति वर्त्तते। यदि दैवात्पिता करोति विषमविभागस्तदा न निवर्त्तते इत्याह। याज्ञवल्क्यः। न्यूनाधिकविभक्तानां धर्म्यः पितृकृतः स्मृतः। धर्म्यो यदि धर्म्मादनपेतस्तर्हि न निवर्त्तनीय इत्यर्थः। अधर्म्यश्चेन्निवर्त्यते इत्युक्तं भवति। तथाच नारदः। अन्यथाशास्त्रकारी च न विभागे पिता प्रभुः। इति। यत्र च विषमविभागे लोकविद्वेषाभावस्तत्र विषमविभागो भवत्येव। यदाह नारदः। द्वावंशौ प्रतिपद्येत विभजन्नात्मनः पितेति। एतच्च स्वतन्त्रोपार्ज्जितपरम्। यदाह वशिष्ठः। येन चैषां स्वयमुपार्ज्जितं स्यात् स द्व्यंशमेव लभेत इति। एषां दायार्हपितृभ्रात्रादीनाम्।

द्वितीयं पक्षमाह विभजेयुर्धनं सममित्यनुवृत्तौ नारदः। मातुर्निवृत्ते रजसि प्रत्तासु भगिनीषु च। निवृत्ते चापि रमणात्पितर्युपरतस्पृहे। प्रत्तासु विवाहितासु, रमणं स्त्रीसम्भोगः। तदिच्छानिवृत्तौ सत्यामित्यर्थः। स्पृहा द्रव्यविषया। तृतीय-पक्षमाह शङ्खः। अकामे पितरि रिक्थविभागो वृद्धे विपरीतचेतसि रोगिणि चेति। अकाम इति। विपरीतचेतसि अधर्मवर्त्तिनि। चतुर्थपक्षमाह याज्ञवल्क्यः। विभजेरन् सुताः पित्रोरूर्द्ध्वं रिक्थमृणं समम्। पित्रोर्मातापित्रोरूर्द्ध्वं रिक्थं तदीयद्रव्यं तदीयमृणञ्च समं विभजेरन्नित्यर्थः। पितृमरणानन्तरं पातित्यादिदोषदुष्टे वा पितरि जीवति यदा पुत्त्रा एव विभागकर्त्तारस्तदा विशेषमाह स एव। असंस्कृतास्तु संस्कार्य्या भ्रातृभिः पूर्व्वसंस्कृतैः। भगिन्यश्च निजादंशाद्दत्त्वांशन्तु तुरीयकम्। असंस्कृतानां विवाहान्तसंस्कारैरसंस्कृतानां भ्रातृणां भगिनीनाञ्च विवाहान्तसंस्कारङ्कृत्वा पश्चाद्विभागः कर्त्तव्य इत्यर्थः। भगिन्यश्चेत्यादेरयं तात्पर्य्यार्थः। भगिनीनामसंस्कृतानां विवाहङ्कृत्वा ताभ्यश्चतुर्थमंशं दद्यात्। कस्मान्निजादंशात्। अत्र यज्जातीयपुत्त्रस्य योऽंशश्चतुस्त्रिद्व्येकभागाः स्युरिति वक्ष्यमाणः सोऽंशो निजांशस्तस्मात्। अयञ्च विभागक्रमः ब्राह्मणस्यैका पत्नी तत्पुत्रोऽप्येक एवैका च कन्या तत्र पितृद्रव्यं द्वेधा विभज्य तत्रैकमंशं चतुर्द्धा कृत्वा तुरीयांशं कन्यकायै दत्त्वावशिष्टं पुत्रो गृह्णीयात्। यदा पुत्रौ द्वौ कन्या चैका तदा पितृद्रव्यं त्रेधा विभज्य तत्रैकमंशं चतुर्द्धा कृत्वा तुरीयांशं कन्यायै दत्त्वा अवशिष्टं द्वावपि पुत्रावर्द्धमर्द्धं गृह्णीतः। एवं पुत्त्रबहुत्वे कन्याबहुत्वे चोहनीयम्। यद्येकः पुत्त्रः द्वे च कन्ये तदा पितृधनं त्रेधा विभज्य तत्रैकमंशं चतुर्द्धा कृत्वा एकमेकं चतुर्थांशं द्वाभ्यां कन्याभ्यां दत्त्वावशिष्टमखिलं पुत्त्र एव गृह्णाति। एवमेव समानजातीयेषु भ्रातृषु भगिनीषु संख्यावैषम्ये योजनीयम्। यदा जातिवैषम्यं संख्यासाम्यं वैषम्यं वा तदैवं द्रष्टव्यम्। * * * * *

केचन एवं मन्यन्ते। पूर्व्वोक्तरीत्या चतुर्थमंशं कन्यकायै दत्त्वा तेनैव विवाहः कर्त्तव्यः न तु समुदितद्रव्येण विवाहङ्कृत्वा पुनरपि चतुर्थांशदानमिति तन्मेधातिथिमितावराकारादीनामनभिमतत्वादुपेक्षणीयं अथवा देशाचारतो व्यवस्था।

II

याज्ञवल्क्यः २—१२८-१२१ * * * *

सवर्णा धर्म्मविवाहोढ़ा धर्म्मपत्नी तस्यां जातः पुत्रः औरसः स च मुख्यः तथासुरादि-विवाहोढा सवर्णापुत्त्रोऽपि तथा अनुलोमविवाहितक्षत्त्रियादिस्त्रीषु ब्राह्मणादुत्पन्नो मूर्द्धावसिक्तो ऽम्बष्टो निषादापरपर्य्यायपारशवश्च वैश्यादिस्त्रियां राजत उत्पन्नौ माहिष्योग्रौ च शूद्रायां वैश्यादुत्पः करणश्चेत्येते औरसा एव। पुत्त्रिकैवपुत्त्रः पुत्त्रि-कायाश्च पुत्त्र इत्युभयविधोऽपि पुत्त्रिकासुतस्तत्सम औरससमः। तथा द्व्यामुष्यायणोऽपि जनकस्यौरसएव। * * * * *

दत्तकोऽपि सवर्ण एव। यदाह मनुः। माता पिता वा दद्यातां यमद्भिः पुत्रमापदि। सदृशं प्रीतिसंयुक्तं स ज्ञेयो दत्रिमः सुतः। सदृशं सवर्णं भर्त्तरि प्रोषिते मृते वा आपदि केवलं मातुरधिकारो दाने तथा मातरि मृतायामुन्मादादियुक्तायां वा आपदि केवलं पितुरधिकारः। अन्यथोभयोरपि सहैव। आपदीत्यापच्छब्दोपादानादनापदि न देय इति गम्यते। अनापदि दत्ते दातुर्दोषो न प्रतिग्रहीतुः। एकः पुत्रो न देयो नापि प्रतिग्राह्य इत्याह वशिष्ठः। नत्वेवैकं पुत्रं दद्यात्प्रतिगृह्णीयाद्वेति। तथा ज्येष्ठोऽपि न देयः। पुत्रप्रतिग्रहप्रकारमाह वशिष्ठः। पुत्रं प्रतिग्रहीष्यन् बन्धूनाहूय राजनि चावेद्य निवेशनस्य मध्ये व्याहृतिभिर्हुत्वादूरबान्धवं बन्धुसन्निकृष्ट-मेव प्रतिगृह्णीयादिति। निवेशनस्य स्वगृहस्य। अत्यन्तदेशभाषाविप्रकृष्टस्य प्रतिषेधार्थमदूरबान्धवमित्युक्तम्। अयं विधिः क्रीतस्वयंदत्तकृत्रिमेष्वपि यथायोग्यं योज्यम्। * * * * *

कात्यायनः। उत्पन्ने औरसे पुत्रे चतुर्थांशहराः सुताः। सवर्णा असवर्णास्ते ग्रासाच्छादनभाजनाः। सवर्णाः क्षेत्रजदत्तकक्रीतकृत्रिमस्वयंदत्तापविद्धा असवर्णाः कानीनगूढोत्पन्नसहोढ़पौनर्भवाः।

III

विभागोत्तरकालमुत्पन्नपुत्रं प्रत्याह। मनुः। ऊर्द्ध्वं विभागाज्जातस्तु पित्र्यमेव हरेद्धनम्। पित्र्यमित्यत्रैकशेषः। अतएव मातापित्रोरिदं पित्र्यम्। तथाच। पुत्रैः सह विभक्तेन पित्रा यत्स्वयमर्ज्जितम्। विभक्तजस्य तत्सर्व्वमनीशाः पूर्व्वजाः स्मृताः। तथाच। संसृष्टास्तेन वा ये स्युर्विभजेत स तैः सह। ये विभक्ताः

यस्तु पुनः पित्रा सह संसृष्टः तैः संसृष्टैः सह विभक्तो विभजेदित्यर्थः। पितरि भ्रातरि वा मृते अस्पष्टगर्भायां मातरि भ्रातृपत्न्यां वा सत्यां अन्येषु भ्रातृषु विभक्तेषु सत्सु तस्मादेव गर्भाद्विभागानन्तरसमुत्पन्नस्य पुत्रस्य कथं भागकल्पनेत्याकाङ्क्षायाम्। याज्ञवल्क्यः। दृश्याद्वा तद्विभागः स्यादायव्ययविशोधितात्। * * *

स्पष्टगर्भायां मातरि भ्रातृपत्न्यां वा प्रसवानन्तरं विभागः कर्त्तव्यः। यदाह वशिष्ठः। अथ भ्रातॄणां दायविभागो याश्चानपत्याः स्त्रियस्तासामापुत्रलाभादिति। तासां स्पष्टगर्भाणां स्त्रीणामापुत्रलाभादाप्रसवात् प्रसवं प्रतीक्ष्य दायविभागो भवतीत्यर्थः। विभागानन्तरं मात्रा पित्रा वा विभक्ताय पुत्रायालङ्करणादिके दीयमाने विभागानन्तर-समुत्पन्नेन न निषेधः कार्यः। तथाच योगीश्वरः। पितृभ्यां यस्य यद्दत्तं तत्तस्यैव धनं भवेत्। विभागात् प्राक् पित्रा मात्रा वा यस्मै यद्दत्तं तत्तस्यैव समानन्यायत्वात्। अतएव एकस्मै दीयमानेऽन्येन निषेधोऽपि न कार्यः।

IV

अथ पितामहधने पौत्रविभागः।

तत्र याज्ञवल्क्यः। अनेकपितृकाणां तु पितृतो भागकल्पना। अनेकेभ्यो भ्रातृभ्यस्तद्भार्यासूत्पन्ना अनेकपितृका भ्रातृजा इत्यर्थः। तेषां स्वस्वपितृद्वारेण पैतामहधनस्य भागकल्पना। अयमभिप्रायः। सप्तमी भ्रातरस्तत्रैकस्यैकः पुत्रोऽपरस्य द्वावन्यस्य त्रयः पुत्राः एवं षट् ते पितामहधनं षोढा विभज्य न गृह्णीयुः अपि तु पितामहधनं भ्रातॄणां त्रेधा विभज्य यस्यैकः पुत्रः स स्वपित्रंशं लभते। यस्य द्वौ तावपि स्वपित्रंशं लभेते। एवमन्यत्रापि इति। पुत्रोत्पत्त्यनन्तरं केषुचिद्भ्रातृषु मृतेषु केषुचिद्विद्यमानेषु भ्रातॄणां भ्रातृपुत्राणामपि पूर्व्वोक्तरीत्या एव विभागः भ्रातरः स्वांशं भ्रातृपुत्राः स्वपित्रंशं लभन्त इत्यर्थः। पितामहद्रव्येऽपि पित्रा सह विभागे विशेषमाह स एव। भूर्या पितामहोपात्ता निबन्धो द्रव्यमेव वा। तत्र स्यात् सदृशं स्वाम्यं पितुः पुत्रस्य चोभयोः। भूः व्रीहियवादिका निबध्यत इति निबन्धः एकस्यां पर्णवाटिकायामियन्ति पर्णानि भवन्ति एकस्यां क्रमुकवाटिकायामियन्ति क्रमुकफलानि भवन्तीति तद्व्यापारकोविदैः संख्यया पर्णभरकादिकं निबध्यत इति निबन्धः। द्रव्यं प्रतिग्रहविजयव्यापारकृष्यादिभिरुपार्ज्जितं सुवर्णरजतादि। एतादृशि समस्ते पैतामहधने पितुः पुत्रस्य स्वाम्यं सममेव। अतो जीवति पितरि

पितुरिच्छयैव विभागः। पितुश्च द्वावंशौ पित्रतौ भागकल्पनेत्यादि नियमा न सन्तीत्यर्थः शूद्रादासामुत्पन्नस्य पौत्रस्याप्येवमेव स्वाम्यं परन्तु विभागे विशेषः स च विशेषोऽनन्तरपुत्रविभागकरणान्तोक्तरीत्या वेदितव्यः न त्वनेकपितृकाणान्तु पितृतो भागकल्पनेत्यनेन पैतामहधनस्य पितृद्वारा भागक्लृप्तिरिति स्वरूपत उक्तं भूर्या पितामहोपात्ता इत्यनेन तु पितापुत्रयोः पैतामहधने सममेव स्वाम्यमित्युच्यते अतः पूर्व्वापरविरोधः इति चेन्नैवम् अनेकपितृकाणामित्येतत्पितरि मृते पुत्राणां पैतामहधनविभागविषयम्। एतच पितृतो भागकल्पनेत्यनेन पदेन द्योत्यते पितृद्वारा पौत्राणामेवांशसम्बन्धोऽवगम्यते। एतत्तु पितरि विद्यमाने न घटत इति तस्यापि जन्मनैव स्वत्वात् पितरि मृते तु मरणादेव तस्य तु स्वत्वनिवृत्तेः पौत्राणामेवांशसम्बन्धो घटत इति पितृमरणानन्तरं पौत्रादीनां पैतामहधनविभागप्रकारः अनेकपितृकाणामित्यनेन वचनेन नियम्यते। भूर्या पितामहोपात्तेत्येतत्तु पितापुत्रयोः विद्यमानयोः पौत्रापेक्षया पैतामहधनविषयम्। एतच पितुः पुत्रस्य चैव द्वीत्यनेनांशेन द्योत्यते मृतस्य स्वाम्याभावादन्यतरस्य ऽपि तत्र स्यात्तदंशं साम्यं पितुः पुत्रस्य चैव द्वीत्यनुपपन्नं स्यात्। यदा त्वयो भ्रातरस्तत्रैकस्यैकः पुत्रः अन्यस्य द्वौ अपरस्य त्रयः तथाच सर्व्वेषु पितापुत्रेषु विद्यमानेषु पूर्व्वोक्तैव व्यवस्था यदा त्वेकपुत्रसन्ततौ पुत्राः पौत्राश्च जीवन्ति पुत्रान्तरसन्ततौ तु पुत्राः अपरस्य पौत्रा एव तदा जीवतः पितुः पुत्राः भूर्या पितामहोपात्तत्यनेन न्यायेन पैतामहधनं लभन्ते। यदन्ये पुत्रा मृताः पौत्रा एव वर्त्तन्ते तदा अन्ये पौत्रा एव स्वांशान् लभन्ते। अनेकपितृकाणान्तु पितृतो भागकल्पनेत्यनेन न्यायेन भूर्या पितामहोपात्तेत्यनेन न्यायेन तेषां प्रमीतपितृकत्वादयश्च विभागक्रमः पितामहे मृत एवास्मिन्विद्यमाने पितामहेच्छया पुत्रेच्छया विभागो भवति न पौत्रेच्छया पितरि विद्यमाने पितुरिच्छया वा क्वचन पुत्रेच्छया वा विभागो भवति इति विभागकालकथनप्रस्तावेऽभिहितत्वात्।

V

अथ मातुरंशक्लृप्तिः।

तत्र याज्ञवल्क्यः। यदि कुर्य्यात्समानांशान् पत्न्यः कार्य्याः समांशिकाः। न दत्तं स्त्रीधनं यासां भर्त्रा वा श्वशुरेण वा। समांशन्यूनाधिकाभाव रहितांशपरः। अथवा समांशत्वेऽपि चतुस्त्रिद्व्येकभागाः स्युरित्यत्र समानांशपरः शास्त्रोक्तत्वात् समव्यपदेशः। एवं स्थिते यदा पिता स्वेच्छया पुत्रान् सर्व्वान् समांशभाजः

करोति तदा पत्न्योऽपि समांशिकाः कार्य्याः यदि ब्राह्मण्याद्युत्पन्नपुत्राणां सदृशा एवांशास्तदा तन्मातॄणामपि सदृशा एव यदा तु मूर्द्धावसिक्तादिपुत्राणां यथाक्रमेण विषमांशास्तदा तन्मातॄणामपि स्वस्वपुत्रसमांशाः एवं प्राप्तापवादः न दत्तमित्यादि स्त्रीधनमलङ्कारादि यदि स्त्रीधनं दत्तं तदा दत्ते त्वर्द्धं प्रकीर्त्तितमित्यधिवेदन-प्रकरणोक्तप्रकारो विज्ञेयः स च प्रकारः दत्ते त्वर्द्धं प्रकीर्त्तितमिति अर्द्धशब्दोऽंशमात्रपरो न तु समविभक्तांशपरः यावता धनेन स्वपुत्त्रांशान्न्यूनं भवति स्त्रीधनं तावद्धनं दत्त्वा पत्न्यंशोऽपि पुत्त्रांशसमः कर्त्तव्य इति नन्वेवं सति प्रकारान्तरेण स्त्रीधनमपि विभज्यमित्युक्तं स्यात्तथाच स्त्रीधनस्याविभाज्यत्वप्रतिपादकवचनविरोध इति चेन्नैवम्। यत्र अपवादकं वचनमस्ति तत्र अपवादकबलात् सामान्येन स्त्रीधनस्याविभाज्यत्वप्रतिपादकवचनानां बाधः यत्रापवादो नास्ति तत्र न बाधः। अत्र च न दत्तं स्त्रीधनं यासामिति दत्ते त्वर्द्धं प्रकल्पयेदित्यनयोरार्थिकैकवाक्यत्वेनापवादकत्वं यदा तु पिता ज्येष्ठं वा श्रेष्ठभागेनेत्याद्युक्तप्रकारेण विषमभागं करोति तदा पत्नीनां श्रेष्ठादिभागा न सन्ति किन्तु श्रेष्ठादिभागोद्धारे कृते यदवशिष्टं समुदितद्रव्यं तस्मात्समानांशान् पत्न्यो लभन्ते तथा स्वकीयोऽलङ्कारश्च। तथाचापस्तम्बः। परीभाण्डञ्च गृहे अलङ्कारो भार्य्याया इति गृहोपकरणम् दृषदुदूखलमुषलसूर्पादि परीभाण्डमित्युच्यते। पितरि मृते सति पुत्त्रैः क्रियमाणे विभागेऽपि मातुः समांश एव। तथाच योगीश्वरः। पितुरूर्द्ध्वं विभजतां माताप्यंशं समं हरेत्। पितुरूर्द्ध्वं पितृमरणानन्तरमत्रापि न दत्तं स्त्रीधनं यासां भर्त्त्रा वा श्वशुरेण वा इति तथा दत्ते त्वर्द्धं प्रकल्पयेदित्येतद्वाक्यद्वयं योज्यं समानन्यायत्वात् प्रतिषेधाभावाच्च। एवमेव विज्ञानेश्वरधारेश्वरादीनामभिमतमथवा दत्ते त्वर्द्धं प्रकल्पयेदित्यत्रार्द्धशब्दः सम-विभागपरः अतश्च स्त्रीधने विद्यमाने पुत्रांशस्यार्द्धं दशनिष्कह्रपपुत्त्रांशस्यार्द्धं पञ्च-निष्कात्मकं दद्यादित्युक्तं भवति। भ्रातृभार्य्याणां योऽलङ्कारः सोऽविभाज्य एव तथा स्त्रिय एव यदा विभागाधिकारिण्यस्तदापि यस्यै यद्विभूषणं पूर्व्वं दत्तं तत्तदप्य-विभाज्यमेव एतच्च अविभाज्यप्रकरणे व्यक्तं भविष्यति। यदा तु पितामहोपार्ज्जितं धनं पितापुत्रौ विभज्य गृह्णीतः तदा पितामहपत्नी सपुत्रा पूर्व्वोक्तरीत्या समांशं लभते माताप्यंशं समं हरेदित्युक्तत्वात् पितामहोपार्ज्जितद्रव्यत्वाच्च यदि पितामह-पत्न्यऽपुत्रा तर्हि स्वालङ्कारं प्रीतिदत्तं लभते नांशम्। तथा पैतामहधनविभागे मातांशं न लभते किन्तु स्वाभरणादिकमेव। यदि कुर्य्यात्समानंशान् पत्न्यः कार्य्याः समांशिकाः। तथा पितुरूर्द्ध्वं विभजतां माताप्यंशं समं हरेत्। इति। अनयोः केवलपितृप्रधानकस्वाम्योपेतधनविषयकत्वात् पितृप्रधानकत्वं स्वाम्योपेतत्वं चैवं बोध्यं

यद्धनं पित्रा विभागलब्धं प्रतिग्रहादिभिर्वा तस्य तादृक्त्वमिति पितृधनत्वं पुत्रगामीत्युक्तं मातृधने को वाधिक्रियतामित्याकाङ्क्षायामाह याज्ञवल्क्यः। मातुर्दुहितरः शेषमृणात्ताभ्य ऋतेऽन्वयः। मातृकृतर्णापाकरणानन्तरं यदवशिष्टं मातृधनं तद्दुहितरो विभज्य मातृधनं गृह्णीयुः। तत्रायं विशेषः। विवाहिताविवाहितदुहितृसद्भावे त्वविवाहिता एव गृह्णीयुः। अविवाहितानामभावे विवाहितदुहितृमध्ये या दरिद्रतरा दुहितरस्ता एव गृह्णीयुरिति। तथाच गौतमः। स्त्रीधनं दुहितॄणामप्रत्तानामप्रतिष्ठितानाञ्चेति। अप्रत्ता अविवाहिता अप्रतिष्ठिता दरिद्राः ताभ्य ऋते दुहितृभ्यो विना तदा दुहितृसन्तत्यभावे च अन्वयः अत्रादौ गृह्णीयाद्दुहिता ततस्तत्सन्ततिरित्ययमर्थः उत्तरत्र वक्ष्यते।

VI

अथानपत्यस्त्रीधनग्रहणाधिकारिणः।

तत्र याज्ञवल्क्यः। अतीतायामप्रजसि बान्धवास्तदवाप्नुयात्। अप्रजस्त्रीधनं भर्त्तुर्ब्राह्मादिषु चतुर्ष्वपि। दुहितॄणां प्रसूता चेच्छेषेषु पितृगामि तत्। तत्स्त्रीधनमप्रजस्यपत्यरहितायां दुहितृदौहित्रपुत्रपौत्ररूपापत्यरहितायां स्त्रियां मृतायां बान्धवा भर्त्रादय आप्नुयुः। ब्राह्मदैवार्षप्राजापत्यविवाहसंस्कृतायां भार्य्यायां मृतायां तद्धनं भर्त्ता गृह्णाति तदभावे ये भर्त्तृकुले प्रत्यासन्नतरास्ते गृह्णीयुः तदभावे ये पितृकुले प्रत्यासन्नास्त इति विवेकः। शेषेषु आसुरगान्धर्व्वराक्षसपैशाचेषु विवाहेषु भार्य्यात्वं प्राप्तायां मृतायां धनं मातापितरौ गृह्णीतः प्रथमं माता तदभावे पिता तदभावे पितृकुलप्रत्यासन्ना बान्धवास्तदभावे भर्त्तृकुले प्रत्यासन्नास्ते गृह्णीयुः। सर्व्वेष्वपि विवाहेषु यदि सा प्रसूता तदा दुहितॄणां दुहितृदौहित्राणाम्। अत्र दुहितृशब्देन साक्षाद्दुहित्रभिधाने मातुर्दुहितरः शेषमित्यनेन पौनरुक्त्यं स्याद्दौहित्रीष्वप्यूढानूढासमवाये अनूढा अप्रतिष्ठिताप्रतिष्ठितसमवाये अप्रतिष्ठितैव दौहित्रीणां भिन्नमातृकाणां विषमसंख्यकानां समवाये मातृद्वारा विभागस्तदाह गौतमः। पितृमातृस्वसृवर्गे भागविशेष इति। दुहितॄणां दौहित्रीणाञ्च विद्यमानत्वे दौहित्रीणां प्रीत्या किमपि दातव्यं नांशदानम्। तथाच मनुः। यास्तासां स्युर्दुहितरस्तासामपि

यथार्हत:। मातामह्या धनात्किञ्चित्प्रदेयं प्रीतिपूर्व्वकम्। तासां दुहितॄणां दुहितर: दौहित्रीणामभावे दौहित्रा: यदाह नारद:। मातुर्दुहितरोऽभावे दुहितॄणां तदन्वय:। मातुर्धनं दुहितर आप्नुयु: तदभावे दुहितॄणां दौहित्रीणां तदभावे तदन्वये ये जाता दौहित्रास्तेषामित्यर्थ:। तदन्वय इति प्रथमाविभक्त्यन्तोऽपि पाठ:। तथापि दौहित्रा एव गृह्यन्ते न दौहित्रीसन्ततिस्तस्या दौहित्रादपेक्षया विप्रकृष्टत्वात्। दौहित्राणामप्यभावे मातुर्दुहितर: श्रीपदमणीत्याम्य ऋते ऽन्वय:। इत्यन्वयशब्दोपात्ता: पुत्रपौत्रादय: क्रमेण धनभाज:। अनेनैवाभिप्रायेण मनु:। जनन्यां संस्थितायान्तु समं सर्व्वे सहोदरा:। भजेरन्मातृकं रिक्थं भगिन्यश्च सनाभय:। या भगिन्य: साक्षात्स्वमातृदुहितर: तदभावे तद्दौहित्रपर्य्यन्ता: तदभावे सहोदरा:। मृताया: साक्षात्पुत्रा न सपत्नीपुत्रा: तदभावे पौत्रा इत्यस्य वचनस्य तात्पर्य्यार्थ:। समं सर्व्वे सहोदरा इत्यत्र सहोदरग्रहणं भिन्नोदरनिवृत्त्यर्थम्। स्वपुत्राभावे सपत्नीपुत्रादय:। यदा तु सापत्न्यदुहिता उत्तमजातीया सापत्न्यपुत्रश्च हीनजातीयस्तदोत्तमजातीया दुहितैव गृह्णाति तदभावे तादृग्विधदौहित्र एव। तथाच मनु:। स्त्रियास्तु यद्भवेद्वित्तं पित्रा दत्तं कथञ्चन। ब्राह्मणी तद्धरेत्कन्या तदपत्यस्य वा भवेत्। स्त्रीधनं कन्यका हरेदित्युक्तं स्वापेक्षया स्त्री-स्वापेक्षयैव कन्यका। ततश्च स्त्रीकन्यकाशब्दयो: प्रतियोगिशब्दत्वाभावात्सापत्न्य-माता सापत्न्यदुहिता इति च गम्यते। ब्राह्मणीत्युत्तमजातिप्रदर्शनार्थमत: शूद्रा-स्त्रीधनं ब्राह्मणीक्षत्रियावैश्याकन्यका गृह्णाति। एवं वैश्यास्त्रीधनं ब्राह्मणी क्षत्रिया च क्षत्रियास्त्रीधनं ब्राह्मणीति। अतोत्तमजातीयाया एव सापत्न्यकन्यकाया धन-ग्रहणाभिधानाद्धीनजातीयसपत्नीदुहितॄणामुत्तमजातीयसपत्नीपुत्रसद्भावे धनग्रहणं नास्तीति गम्यते। पुत्रपौत्राभावे भ्राता तदभावे तत्सुता इत्येवंक्रमेण भ्रात्रादयो धनभाज:। एतच्च स्त्रीधनं शुल्कव्यतिरिक्तमेव विभाज्यं शुल्कन्तु सोदरा एव गृह्णीयु:। तथाच गौतम:। भगिनीशुल्कं सोदर्य्याणामूर्द्ध्वं मातुरिति। दुहित्रादिषु पौत्र-पर्य्यन्तेषु विद्यमानेष्वपि भगिनीशुल्कं सोदरा एव हरेयुरित्यर्थ:। * * *

VII

स्त्रीधनस्वरूपमथाह याज्ञवल्क्यः। पितृमातृपतिभ्रातृदत्तमध्यग्न्युपागतम्। आधिवेदनिकाद्यञ्च स्त्रीधनं परिकीर्त्तितम्। बन्धुदत्तं तथा शुल्कमन्वाधेयकमेव च। अध्यग्न्युपागतं विवाहकाले अग्निसमीपे मातुलादिभिर्दत्तम्। आधिवेदनिकम्। अधिविन्नस्त्रियै दद्यादाधिवेदनिकं समम्। न दत्तं स्त्रीधनं यस्यै दत्ते त्वर्द्धं प्रकल्पयेत्। इत्युक्तञ्च। यस्या उपरि विवाहः क्रियते साधिविन्ना सा चासौ स्त्री च अधिविन्नस्त्री तस्यै अधिवेदननिमित्तं धनमाधिवेदनिकं तत्समं दद्याद्यावदधिवेदनार्था अलङ्करणादि तावत्पूर्व्वस्त्रियै दद्यादित्यर्थः। अत्र विशेषमाह न दत्तं स्त्रीधनमित्युत्तरार्द्धमस्य चार्थो विवृतो मातुरंशकथनप्रस्तावे। आधिवेदनिकाद्यञ्च आद्यशब्देन कर्त्तनक्रयसंविभागपरिग्रहनिध्यधिगमादिप्राप्तमुच्यते। कात्यायनः। विवाहकाले यत्स्त्रीभ्यो दीयते ह्यग्निसन्निधौ। तदध्यग्निकृतं सद्भिः स्त्रीधनं परिकीर्त्तितम्। यत्पुनर्लभते नारी नीयमाना पितुर्गृहात्। अध्यावाहनिकाद्यञ्च स्त्रीधनं तदुदाहृतम्। प्रीत्या दत्तञ्च यत्किञ्चिच्छ्वश्र्वा वा श्वशुरेण वा। पादवन्दनिकञ्चैव प्रीतिदत्तं तदुच्यते। ऊढया कन्यया वापि पत्युः पितृगृहेऽपि वा। भ्रातुः सकाशात्पित्रोर्व्वा लब्धं सौदायिकं स्मृतम्। विवाहात्परतो यच्च लब्धं भर्त्तृकुले स्त्रिया। अन्वाधेयन्तु तद्द्रव्यं लब्धं पितृकुलात्तथा। इति।

VIII

अथ विभक्तस्य स्वर्यातस्य पुत्रपौत्ररहितस्य दायग्रहणादिक्रमः।

तत्र याज्ञवल्क्यः। पत्नी दुहितरश्चैव पितरौ भ्रातरस्तथा। तत्सुतो गोत्रजो बन्धुः शिष्यः सब्रह्मचारिणः। एषामभावे पूर्व्वस्य धनभागुत्तरोत्तरः। स्वर्यातस्य ह्यपुत्रस्य सर्व्ववर्णेष्वयं क्रमः। पत्नी विवाहसंस्कृता एकवचनन्तु जात्यभिप्रायाद्। ततश्च यदा सवर्णा असवर्णा वा ताः सर्व्वाश्चतुस्त्रिद्व्येकभागाः स्युरित्यनेन क्रमेण विभज्य धनं गृह्णन्ति। पत्न्यभावे दुहितरः। तथाच कात्यायनः। पत्नी भर्त्तुर्धनहरी या स्यादव्यभिचारिणी। तदभावे तु दुहिता यद्यनूढा भवेत्तदा। यद्यनूढा भवेदिति विशेषोपादानात् ऊढानूढानां समवायेऽनूढैव गृह्णाति तदभावे

ऊढ़ा। ऊढ़ास्वपि दरिद्रा गृह्णाति तदभावे तु सम्पन्ना कन्या स्त्रीधनं दुहितॄणाम-प्रत्तानामप्रतिष्ठितानाञ्चेति गौतमवचनन्यायस्य पितृधनेऽपि समानत्वात्। दुहित्र-भावे। दौहित्रोऽपि धनभाक्। यदाह विष्णुः। अपुत्रपौत्रसन्ताने दौहित्रा धनमाप्नुयुः। पूर्व्वेषान्तु स्वधाकारे पौत्रदौहित्रका मताः। अयमर्थो याज्ञ-वल्क्येनापि दुहितरश्चैवेत्यत्र चकारेण द्योतितः। दौहित्रस्याभावे पितरौ धनभाजौ। माता च पिता च पितरौ अत्रैकशेषक्रमात् प्रतीतावपि विग्रहवाक्ये क्रमप्रतीते-र्विग्रहवाक्यक्रमः कर्त्तव्यो दायग्रहणेऽपि। ततश्च प्रथमं माता गृह्णाति तदभावे पिता। तच्च तथा पत्नी दुहितर इत्येतस्मिन् समस्ते वाक्यसन्दर्भे च योऽयं क्रमः धनभागुत्तरोत्तर इति वाक्यशेषेऽभिहितः तत्सकलमपि तथैवेत्यस्माभिरुपपादितं पिताक्षराटीकायां सुबोधिन्यां व्यवहाराध्याये विस्तरभयान्नेह लिखितम्। पित्रभावे भ्रातरस्तत्रापि प्रथमं सहोदराः सहोदराणामेकमातृकत्वेन सन्निकर्षात्। सहोदरा-णामभावे भिन्नोदराः सन्निकर्षविशेषादेव धनग्रहणं स्मर्य्यते। अनन्तरः सपिण्डा-द्यस्तस्य तस्य धनं भवेदिति सपिण्डाद्योऽनन्तरः सन्निहितः प्रत्यासन्नः शरीरसम्बन्धेन तस्य प्रत्यासन्नस्य धनं सपिण्डस्य धनं भवेदित्यर्थः। उभयविधभ्रातृभावे तत्सुता भ्रातृपुत्रास्तत्रापि प्रथमं सोदरभ्रातृपुत्रास्तदभावे भिन्नोदरभ्रातृपुत्राः। यदा त्वेक-स्मिन् भ्रातरि मृते तद्धनं पत्नी दुहितरइत्यनेन न्यायेन भ्रातृसम्बन्धित्वेन प्राप्तं प्राप्ते च तद्धनविभागात्पूर्व्वमेवैको भ्राता मृतस्तत्पुत्राः सन्ति तदा तत्पुत्राणां पितृतो भागकल्पनेत्यनेन न्यायेन पितृभागोऽस्त्येव स्वपितुर्धनग्रहणाधिकारानन्तरं मृतत्वात्। भ्रातृपुत्राभावे गोत्रजा धनभाजः गोत्रजा इत्यनेन पितामही पितामहः पितामह-पुत्रास्तत्पुत्राश्च तदभावे प्रपितामह्यादयस्तेषामप्यभावे समानोदकाश्च गृह्यन्ते तत्रायं क्रमः। भ्रातृपुत्राभावे पितामही तस्या अभावे पितामहः यथा मातनन्तरमेव पितुरधिकारस्तथा पितामह्यनन्तरं पितामहस्याधिकारः। पितुरभावे भ्रातृणामिव पितामहस्याभावे पितृव्यास्तत्रापि सोदरभिन्नोदरव्यवस्था पूर्व्ववदेव साक्षात्पितामही-पुत्राः प्रथमं धनभाजस्तदभावे सापत्न्यपितामहीपुत्रास्तेषामप्यभावे भ्रातृपुत्रन्यायेन पितृव्यपुत्रास्तेषामभावे प्रपितामही तस्या अभावे प्रपितामहस्तदभावे प्रपितामहपुत्राः भ्रातृन्यायेनैव तदभावे तत्पुत्रा इत्येवं सप्तमपुरुषपर्य्यन्तं वेदितव्यम्। एवं सप्तमपुरुषाधिकसपिण्डाभावे समानोदकाः तत्रापि पूर्व्वोक्तरीत्या प्रत्यासत्तिविशेषो द्रष्टव्यः। गोत्रजानामभावे बन्धवो धनग्रहणाधिकारिणः। त्रिविधा हि बन्धवः आत्मबन्धवः पितृबन्धवो मातृबन्धवश्चेति। यथोक्तम् वृद्धशातातपेन। आत्मपितुः स्वसुः पुत्रा आत्ममातुः स्वसुः सुताः। आत्ममातुलपुत्राश्च विज्ञेया आत्मबान्धवाः।

पितुः पितुः स्वसुः पुत्राः पितुर्मातुः स्वसुः सुताः। पितुर्मातुलपुत्राश्च विज्ञेया पितृबान्धवाः। मातुः पितुः स्वसुः पुत्रा मातुर्मातुः स्वसुः सुताः। मातुर्मातुलपुत्राश्च विज्ञेया मातृबान्धवाः। इति। तत्रापि प्रत्यासन्नत्वात् पाठक्रमेणात्मबन्धवो धनभाजस्तदभावे तथैव पितृबन्धवस्तदभावे तथैव मातृबन्धव इति क्रमः। बन्धूनामप्यभावे आचार्य्यस्तदभावे शिष्यः। तथाचापस्तम्बः। पुत्राभावे यः प्रत्यासन्नसपिण्डस्तदभावे आचार्य्यस्तदभावेऽन्तेवासीति शिष्याभावे सब्रह्मचारी एकाचार्य्योपनीतोऽध्यापितो वा सब्रह्मचारिणामप्यभावे श्रोत्रिया धनभाजः। यदाह गौतमः। श्रोत्रिया ब्राह्मणस्यानपत्यस्य ऋक्थं भजेरन्निति। एकशाखाध्यायी श्रोत्रियस्तस्याप्यभावे ब्राह्मणमात्रः समीपस्थो गृह्णाति। तथाच मनुः। सर्व्वेषामप्यभावे तु ब्राह्मणा ऋक्थभागिनः। त्रैविद्याः शुचयो दान्तास्तथा धर्म्मो न हीयते। इति। ब्राह्मणद्रव्यं कदाचिदपि राजा न गृह्णीयात्। यदाह नारदः। ब्राह्मणार्थस्य तन्नाशे दायादश्चेन्न कश्चन। ब्राह्मणायैव दातव्यमेनस्वी स्यान्नृपोऽन्यथा। मनुः। अहार्य्यं ब्राह्मणद्रव्यं राज्ञा नित्यमिति स्थितिः। क्षत्रियादिधनं सब्रह्मचारिपर्य्यन्तानामभावेऽपि न ब्राह्मणो गृह्णीयादपि तु राजैव गृह्णीयात्। यदाह मनुः। इतरेषान्तु वर्णानां सर्व्वाभावे हरेन्नृपः। इति। एवं पुत्रादिक्रमेण दायग्रहणप्रकारे सर्व्वत्र प्राप्ते क्वचिदपवादमाह याज्ञवल्क्यः। वानप्रस्थयतिब्रह्मचारिणामृक्थभागिनः। क्रमेणाचार्य्यसच्छिष्यधर्म्मभ्रात्रेकतीर्थिनः। ब्रह्मचारी नैष्ठिकोपकुर्व्वाणकः सच्छिष्यः अध्यात्मशास्त्रश्रवणमननाद्युपेतः धर्म्मभ्राता भ्रातृत्वेनाङ्गीकृतः। एकतीर्थी एकाश्रमी वानप्रस्थ एव स्वाश्रमनिकटवासी धर्म्मभ्राता चासावेकतीर्थी च धर्म्मभ्रात्रेकतीर्थी। अत्र क्रमशब्दः प्रतिलोमक्रमाभिप्रायः। वानप्रस्थस्य धनम् अह्नो मासस्य षण्णां वा तथा संवत्सरस्य वा। अर्थस्य सञ्चयङ्कुर्य्यात्कृतमाश्वयुजि त्यजेत्। इत्यनेन प्रकारेण यदुपार्ज्जितं तदन्नादिरूपं वस्तु धर्म्मभ्रात्रेकतीर्थी गृह्णाति। यतेर्धनं वस्त्रपुस्तकादि सच्छिष्यो गृह्णीयात्। नैष्ठिकब्रह्मचारिणो धनं वस्त्रादिकमाचार्य्यो गृह्णीयात्।

DEEPKALIKA.

(A COMMENTARY OF THE YAJNAVALKYA SMRITI) BY SHULAPANI.

ON PARTITION.

Partition during father's life time.

1. "If the father desires to partition &c." (Yajnavalkya II—115). The father if he desires to partition his self-acquired property, he may at his will separate his sons. As Vishnu says: "If a father makes partition with his sons, he may do so in any way he likes in regard to self-acquired property. But in regard to wealth inherited from the paternal grandfather, the ownership of father and son is equal." (In regard to grandpaternal property) there cannot be partition in any way the father likes, because of his want of complete ownership. So Devala says: "After the death of the father, the sons should divide his wealth. As long as the faultless father is alive, they have no right." Faultless means when not an outcaste (Patita.) &c.

Partition at the desire of sons.

2 Sometimes, Narada says, there may be partition at the desire of sons, even of father's self-acquired property: "(The distribution of the prooerty shall take place) when the mother has ceased to menstruate and the sisters are married or when the father's sexual desire is extinguished and he has ceased to care for worldly interests." *Ramanat Nibritte* means when the power of sexual enjoyment is lost; 'ceased to care for worldly interests' means when he becomes a hermit after relinquishing the state of the householder.

Preferential shares.

3. 'To the eldest, &c.' (Yajnavalkya II—115) means the father may give to the eldest an additional share or so divide as all the sons may be equal shares. So says Narada: "When a father has distributed his property amongst his sons, that is a lawful distribution for them, whether the share of one be less or greater than or equal to the shares of the rest, for the father is lord of all."

Sonless wives of the father entitled to equal shares.

4. "If he give &c." (Yajnavalkya II—116) (means) that when the father gives to the sons equal shares he should give equal shares to his sonless wives, to whom Stridhana have not been given by the husband and the like, from the text of Manu: "when if any have been assigned, let him allot half." When Stridhana had been given to the wife, she should get half of a share.

Father's double share.

5. The father should himself take two shares when he has got only one son. But when he has many sons he should take less than two shares. As says Sanka Likhita:

"If he has only one son, the father shall take two shares." Thus the text of Narada: "two shares let the father keep for himself when partitioning his property" refers to the same circumstance.

6. "If one have means, &c." (Yajnavalkya II—117) means if one is able to earn by learning and the like and does not desire to get the common property, he should be separated by the brethren after giving him some rice or the like, so that in future his sons may not question the partition.

Partition after father's death.

7. Now speaks of partition among sons whose father is dead. "Let sons divide &c." (Yajnavalkya II—118) means that all the sons whether having good qualities or devoid of qualities after the death of the mother and the father should equally divide the wealth and debts of the father. As regards the text of Manu "the additional share of the eldest shall be one-twentieth &c.," that refers to younger sons devoid of good qualities. Among sons possessing good qualities there is no additional share for the eldest because Manu has prohibited it in the text "but among brothers equally skilled in their occupations, there is no additional share (consisting of the best animal) among ten."

Succession to mother's estate.

8. The daughters take equally the mother's wealth after payment of her debts. A special rule is mentioned by Gautama: "A woman's separate property goes to her unmarried daughters and to poor unprovided daughters." (In this text) *Apratta* means unmarried. *Apratisthita* means childless, poor, widowed and unfortunate. On failure of such daughters, their *Anvaya*, which means their son, grandson and the like, take.

Self-acquired property.

9. Now (Yajnavalkya) speaks of impartible property. "Without diminishing the paternal estate, &c." (Yajnavalkya II—119.) What is acquired by agriculture and the like without detriment to the paternal estate or received on account of friendship should not be divided by the co-heirs.

Property lost and regained.

10. "What has discended from the ancestor &c." (Yajnavalkya II—120.) The property which had descended from father or grandfather and had been lost by the father, if it is recovered by one co-heir, he need not share it with the other co-heirs, if he is unwilling.

Gains of learning.

11. 'What is gained by learning' is thus defined by Katyayana: "What has been acquired by learning after getting maintenance from one of a different family is called wealth gained by learning."

Property augmented should be equally divided.

12. "The common property, &c." (Yajnavalkya II—121.) If the common property be augmented by agriculture, trade and the like, then there should be an equal division and one should not be given more on the ground that much had been acquired by him. This refers to

co-heirs who are not learned. So says Manu: "But if all of them being unlearned acquire property by their exertions, the division of that shall be equal as it is not property acquired by the father: that is a settled rule." 'Exertion' here means agriculture and the like *Apitrya* means not paternal.

Grandsons take *per stirpes*.

13. "In making division among grandsons by different fathers, &c." (Yajnavalkya II—121): When many brothers have each sons unequal in number, when the latter divide the grand paternal property, the share of their father should be taken by each set of sons.

Father and son equal right in grand paternal property.

14. "Land &c." (Yajnavalkya II—122): *Nibandha* means property which has been permanently assigned by the King and the like on the King's revenue and the like. Moveable property means gold and the like. In these *i e.*, land, &c., the ownership of the father and the son is equal. In such property, there can be no partition at the will of the father and the shares of the father and the son are equal. So says Vrihaspati: "Of property acquired by the grandfather, whether immovable or movable, father and son are declared entitled to equal share."

Right of the afterborn son.

15. "After partition made &c." (Yajnavalkya II—123): A son who was in the womb, when the fact was not manifest at the time of partition, is born of a wife of equal caste afterwards, takes his share from all the sharers. So says Vishnu: "Sons who have separated from their father should give an equal share to a brother who is born after partition.

16. Manu speaks on the subject of their being conception after partition thus: "A son born after partition shall alone take the property of his father, or if any of the other sons be reunited with the father, he shall share with them."

17. "From the estate as it is &c.": The afterborn son shall receive his share from the property which may be found after allowing for income and expenditure in the property which was received by the other sons at partition.

18. (Yajnavalkya II--124) Ornaments and the like, which might have been given by the mother or the father to one's son, daughter, wife and the like, should not be divided at the death of the father.

Mother's, step-mother's and grand-mother's share.

19. (Yajnavalkya II—125.) After the death of the father when the sons partition, the mother of the sons takes a share equal to that of the sons. So says Vrihaspati, premising the father: "on his death, the mother shall take a son's share." Vyasa mentions a special rule: "The sonless wives of the father are declared equal sharers and the grandmothers also are equal to mothers (as sharers.)"

20. "Whose ritual ceremonies have not been performed &c.": Those brothers whose ritual ceremonies had been performed before should after the death of the father, out of the paternal wealth, perform the ritual ceremonies, like the birth ceremony, of those brothers whose ritual ceremonies had not been performed.

Maiden sister's share.

21. Sisters also should have their ritual ceremonies like marriage performed by the brothers by each giving a fourth part of his share. (Vrihaspati says): "The (step) mothers shall share equally with them; the maiden (daughters) shall take fourth part shares." Devala says: "To unmarried daughters a nuptial portion must be given out of the estate of the father. The daughter of the sonless man takes his estate for religious purposes, like a son." Such wealth should be given according to one's property. So says Vishnu: "When there is an unmarried daughter, she should be married according to one's wealth."

Rights of sons of four castes.

22. "Four shares, &c." (Yajnavalkya II—126.) The sons of a Brahmana born of wives of four castes beginning with the Brahmana, should divide the estate in ten shares out of which they should take four, three, two and one in order according to the caste of their mothers.

23. Yajnavalkya speaks of the division of concealed property: "Appropriated by one another, &c." (Yajnavalkya II—127.) Whatever has been concealed should be divided. The rule applies to debts also as says Manu: "If after all the debts and assests have been divided according to law, any property be afterwards discovered one must divide it equally.

The commentary on Yajnavalkya II 128—134 about different kinds of sons is omitted.

When there is brother's son or step son there is no right to adopt.

24. When there is a brother's son, the secondary sons beginning with the Kshetraja are not entitled to the estate or to offer the oblations. So says Manu: "If among brother's sprung from one father, one have a son, Manu has declared them all to have male offspring through that son." Therefore when there is no brother's son, secondary sons like the Kshetraja, can be taken. The same rule applies to sonless co-wives. Manu says: "If among all the wives of one husband, one have a son, Manu declares them all to be mothers of male children through that son." ***Ekapatninam*** means of those having one husband.

25. "In regard to sons equal by caste &c." (Yajnavalkya II—134.) The rule which is thus declared for legitimate sons is applied to all sons of the same caste except the son purchased.

Right of the Dasiputra of a Sudra.

26. (Yajnavalkya II—135): The son of a Sudra on a Dasi takes a share equal to that of other sons at the option of the father.

27. "After the father's death &c." (Yajnavalkya II—135.) After the father's death, the sons of the married wives of the father should give to the son of the Dasi a half share. If such brothers or son of such a daughter (of the father) do not exist, the son of the Dasi takes the whole.

Succession to the estate of the sonless

28. Now Yajnavalkya speaks of succession to the estate to the sonless man. "The lawfully wedded wife &c." (II—136.) Daughters take in default of the widow. Thus should the text be interpreted. *Sabramachari* means a fellow-student.

29. "Among them &c." (II—137.) On failure of one named before, the one named after succeeds.

Right of the widow.

30. Vishnu says: "The wealth of a man who dies without male issue goes to his wife &c." (Vrihaspati says): "Although kinsmen, although his father and mother and uterine brothers be living, the wife of him who dies without leaving male issue, shall succeed to his share." This rule about the right of the widow when there is a brother, refers to a wife having good qualities. Good quality means performing of the Sraddhas and chastity. Vriddha Manu says: "A sonless widow who keeps the bed for her lord unsullied and who strictly performs the austerities of widowhood shall alone offer the cake at his obsequies and succeed to his entire share." Paithinasi says: "The property of a sonless deceased person goes to the brother, failing him, the parents take or the elder wife." This text refers to a wife, who is without good qualities and unchaste. The text of Sankha "his women should be maintained till their death, provided they are chaste; otherwise they should cut off that allowance" also refers to the unchaste wife.

Right of the daughter.

31. Narada says: "On failure of a son, the daughter succeeds, because she continues the lineage just like a son; both a son and a daughter continue the lineage of their father." This refers to the Putrikaputra. Vrihaspati says: "Equal in caste and married to a man of the same caste virtuous, habitually submissive, she shall inherit her father's property, whether she may have been (expressly) appointed or not." In this "whether appointed or not" means as a Putrika. *Akrita* (not appointed) means not expressly appointed by word but made a Putrika by intention

Right of the parents.

32. "The lawfully wedded wife and the daughter, &c.," (II, 136). The rule of the right of parents when there is a brother applies to property acquired by father, grandfather and the like. The property that is acquired without detriment to the paternal wealth, belongs to the brothers, even, when the parents are living. So says Devala: "Then the uterine brothers shall divide the heritage of a sonless person or the daughters of the same caste or the surviving father."

33. "Among them," &c., (II, 137.) "Among them," *i.e.*, among the heirs beginning with the wife, on failure of the first, the next in order takes. *Svaryata* in the text means deceased.

34. "Of a hermit," &c., (Yajnavalkya II, 138). Dharmabhratakatirthi is compound word formed by Karmadharaya Samasa and means the spiritual brother who is also Ekatirthi Ekatirthi means having the same preceptor. The rest of the text is clear.

Succession to the estate of ascetics.

35. "A reunited brother," &c., (Yajnavalkya II, 139). A reunited brother is defined by Vrihaspati : "He who (having divided) is living through affection together with his father or brother or with his uncle even is said to be reunited with them" (The meaning of the text of Yajnavalkya is) that the share of a deceased reunited brother and the like is taken by the other reunited coparcener, *i.e.*, by the brother and the like. The share of the reunited uterine brother is taken by his surviving uterine reunited brother and not by his half-brother. If the reunited coparcener dies when his wife is pregnant, then his share should be given to his son when born.

Succession to the estate of reunited co-parceners.

36. The rule of the right of the reunited brother applies when there is no son, wife, father or mother. So says Vrihaspati when dealing with the right of the reunited: "When any one brother should die or any how renounce worldly interests, his share is not lost ; it is allotted to his uterine brother. This is the law regarding the wealth of one destitute of issue and who has no wife or father."

37. "A half-brother," &c., (Yajnavalkya II, 140). A reunited half-brother does not take the wealth of his half-brother but the uterine brother takes, even if he is not reunited. "Not the reunited" refers to the half-brother. "One not reunited," some say, means here the full-brother, who is united being born in the same womb. The meaning of the text when read as Anyadoryodhanam, &c, is that being born of another mother does not take the estate. This is intended to establish the right of the unreunited uterine brother. Thus there is no repetition.

38. When the reunited parceners again divide, there should be equal division. So says Manu : "If brothers once divided and living again together as coparceners make a second partition, the division shall in that case be equal. In such a case there is no right to preferential share of the eldest." A distinction is made by Vrihaspati thus : "If among reunited coparceners any one should acquire property through learning, valour and the like, a double share must be given to him ; the rest shall take equal shares."

Exclusion from inheritance.

39. "An impotent person," &c., (Yajnavalkya II, 141). "His issue' means one born of the outcast. *Jada* means one without energy to perform the duties of his own status in life. 'Blind' means born blind from the text of Manu: "the born blind and the deaf likewise"

40. These persons beginning with the impotent should be supported for life with food and raiment but are not entitled to shares.

41. Their sons, Aurasa and Kshetraja, should be given shares to which their fathers would have been entitled. (Yajnavalkya II, 142).

42. Their daughters also should be maintained till they are married.

43. "Their sonless wives," &c., (Yajnavalkya II, 143). The meaning of this text is clear.

Definition of Stridhana.

44. "What was given by the father, mother, husband," &c., (II, 144). Adhyagni means what is given before the fire at the time of marriage by the father and the like. *Adhivedanika* means what is given to the first wife when a second wife is married. By the use of the word Adi or beginning with, in the word Adhivedanikadyam, Adhyavahanika and the like are also included (in the category of Stridhana). That is described by Katyayana: "What a woman receives while she is carried from her father's house to the house of her husband is called the property of a woman given at the bridal procession."

45. "That which has been given by her kindred," &c., (II, 145). It means that which has been given by the kindred of the father and by the kinsmen of the mother.

46. Sulka is thus defined by Katyayana: "Whatever is received as price by women (for sending their husbands to work) on houses, on furniture, on carriages, on milking utensils and on ornaments is called Sulka."

47. Anvadehya is defined, thus (by Katyayana): "Whatever is received by a woman after marriage from her husband's family or from her father's family is called 'gift subsequent.'

Succession to Stridhana.

48. This property given by Bandhus (father's family) and the like to a woman married in the forms, beginning with the Asura, when she is dead, is taken by her Bandhavas, *i.e.*, brothers. So says Gautama: "the sister's fee belongs to her uterine brothers, after the death of the mother. Some declare that it belongs to them, even before her death." After 'the death of the mother' here should be construed as contemplating a case after the death of the father, as when both the mother and the father are alive,

such property belongs to them So says Manu · "It is prescribed that the property which may have been given to a woman married in one of the disapproved forms, beginning with the Asura, goes to her mother and to her father, if she dies without issue"

49 "The property of a childless woman," &c, (II, 146) The property of a childless woman married in one of the approved forms, beginning with the Brahma, goes to her husband But if she leaves daughters, it belongs to them If she had been married in a disapproved form beginning with the Asura, it belongs to her parents

50 Vrihaspati declares the right of succession of the mother's sister, and the like, on failure of the husband and the like Vrihaspati says "The mother's sister, the wife of a maternal uncle, a paternal uncle's wife, a father's sister a mother in law are declared to be equal to a mother If they have no legitimate son of the body nor other son, nor daughter's son, nor their son, the heirs beginning with the sister's son shall inherit their property"

51 On failure of the husband, the succession to Stridhana devolves on the nearest Sapinda of the husband So says the Mitakshara

Consequences of not marrying after betrothal

52 "After affiancing," &c, (II, 147) The father, if after affiancing his daughter, withholds her without cause, should be punished and whatever gold and the like might have been paid by the bridegroom should be returned by the father with interest When an affianced girl dies before marriage the bridegroom should take what remains of what had been given by him, after deducting expenses for the entertainment of the father's party and of the bridegroom's party

When can the husband take Stridhana

53 "In famine," &c, (Yajnavalkya II, 148) means what has been borrowed from a creditor for defraying the expenses of food and for the benefit of others, &c

Compensation for supersession

54 (Yajnavalkya, II, 149) To a wife who is superseded by a second marriage wealth equal to what is given to the second wife at marriage should be given as compensation for supersession, if she had been given Stridhana before, she should be given half of that

Proof of partition

55 "When partition is denied," &c, (Yajnavalkya II, 150) When partition is denied, it should be proved by the evidence of agnates and by evidence of there being separate house and fields So says Narada "Those who keep their income and expenditure and property distinct and lend money on interest and those who trade separately are undoubtedly separate"

महामहोपाध्यायशूलपाणिकृत--

दीपकलिकानाम्न्यां याज्ञवल्क्यटीकायां दायविभागप्रकरणम् ।

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विभागश्चेदित्यादि। पिता यदि स्वार्जित धनस्य भागं कुर्य्यात् तदा स्वेच्छया पुत्रान् पृथक् कुर्य्यात्। यथा विष्णुः। पिता चेत् पुत्रान् विभजेत् तदा स्वेच्छया स्वयमुपात्तेऽर्थे पैतामहे तु पिता पुत्रयोस्तुल्यं स्वामित्वं। स्वेच्छया न विभाग इत्यत्रास्वाम्यं हेतुः। तथा देवलः। पितर्य्युपरते पुत्रा विभजेरन् धनं पितुः। अस्वाम्यं हि भवेदेषां निर्दोषे पितरि स्थिते। निर्दोषेऽपतिते। क्वचित् पित्रार्जिते ऽपि पुत्रेच्छया विभागमाह नारदः। मातुर्निवृत्ते रजसि प्रत्तासु भगिनीषु च। निवृत्ते चापि रमणात् पितर्य्युपरतस्पृहे। रमणान्निवृत्ते रतिशक्तौ निवृत्तायां उपरत स्पृहो गृहस्थाश्रमादानप्रस्थ इत्यर्थः। ज्येष्ठं वेति· ज्येष्ठपुत्रमधिकभागेन विभजेत्। तथा च कुर्य्याद यथा सर्व्वे समांशिनो भवेयुः। तथा नारदः। पित्रैव तु विभक्ता ये समन्यूनाधिकैर्धनैः। तेषां सएव धर्म्मः स्यात् सर्व्वस्य हि पिता प्रभुः। यदीत्यादि। यदि पुत्रान् स्वेच्छया समांशान् कुर्य्यात् तदा पत्न्योऽपि पुत्रशून्याः समांशिकाः कार्य्याः। यासां स्त्रीधनं भर्त्रादिना न दत्तं। दत्तेत्वर्द्धं प्रकीर्त्तित-मिति मनुवचनात्। दत्तस्त्रीधनेत्वर्द्धं देयं। स्वस्यत्वेकपुत्रत्वे भागद्वयं गृह्णीयात्। अनेकपुत्रत्वे न्यूनं भागद्वयं। यथा शङ्खलिखितौ। स यद्येकपुत्रः स्यात् द्वावंशा-वात्मनः कुर्य्यात्। एवं च द्वावंशा वात्मनः कुर्य्यात् विभजन्नात्मनः पितेति नारद वचनमप्येतत्विषयमेव। शक्तस्येत्यादि। विद्यादिनार्ज्जनक्षमः साधारण धनमनिच्छन् किञ्चित्तण्डुलप्रस्थादिकं दत्वा भ्रातृभिः पृथक् कार्य्यः। उत्तर कालं तत् पुत्रादिनाविप्रतिपत्तव्यम्। प्रमीतपितृकविभागमाह विभजेरनित्यादि। यदा पुत्राः सर्व्वे एव प्रकृष्टगुणा निर्गुणा वा तदा मातापित्रोरुपरतौ पितृधन-मृणञ्च समं कृत्वा विभजेरन्। यत्तु मनुना ज्येष्ठपुत्रस्य विंश उद्धार इत्युक्तं तदपकृष्टगुणकनिष्ठविषयं। प्रकृष्टगुणानामुद्धारो न दशस्वस्ति सम्पन्नानां

स्वकर्मस्विति मनुनोद्धारनिषेधात्। मातुर्धनमृणशोधनावशिष्टं दुहितरः समं कृत्वा गृह्णीयुः। विशेषमाह गौतमः। स्त्रीधनं दुहितॄणामप्रत्तानामप्रतिष्ठितानाञ्च। अप्रत्ता अविवाहिता; अप्रतिष्ठिता अनपत्या निर्द्धना अभर्त्तृका दुर्भगाश्च; ताविना अन्वयः पुत्रपौत्रादिः।

अविभाज्य धनमाह। पित्रित्यादि। पितृद्रव्यानुपघातेन कृष्यादिनार्ज्जितं मैत्रीप्राप्तं तद्दायादानां विभजनीयं न भवेत्। क्रमेत्यादि। पितृपितामहागतं द्रव्यं पित्रा हारितं तयोऽभ्युद्धरेत् नतद् दायादानिच्छन् दद्यात्। विद्यालब्धमाह कात्यायनः। परभक्तप्रदानेन प्राप्तविद्यो यदा भवेत्। तदा प्राप्तञ्च यद्वित्तं विद्याप्राप्तं तदुच्यते। सामान्येत्यादि। यदा सामान्यार्थस्य कृषि-वाणिज्यादिना वर्द्धनं भवति तदा समो विभागो न तत्र बहुतरमनेनोपात्तमित्य-पेक्षयाऽधिकदानं कर्त्तव्यं। न तदविद्यानामित्याह मनुः। अविद्यानाञ्च सर्व्वेषामीहात श्चेद्धनं भवेत्। समस्तत्र विभागः स्यादपित्र्य इति धारणा। ईहा कृष्यादि। अपित्र्यः पितृवर्ज्जित इत्यादि।

अनेकपितृकानामनेकभ्रातॄणां वै पुत्रास्तेषां समविषमसङ्ख्यकानामपि पैतामहधने विभज्यमाने यः पितॄणामंशः सएव पुनः प्रत्येकं अंशकल्पना।

भूर्येत्यादि। निबन्धो राजकरादौ राजादिदत्तं नियतलभ्यं द्रव्यं सुवर्णादि। एषु भूम्यादिषु पितुः पुत्रस्यतुल्य स्वाम्यं। अत्र पितिच्छया न विभागोऽंशोऽपि समएव। तथा च बृहस्पतिः। द्रव्ये पितामहोपात्ते स्थावरे जङ्गमेऽपिवा। सममंशित्वमाख्यातं पितुः पुत्रस्य चैव हि।

विभक्तेष्वित्यादि। यो विभागकाले गर्भो न विज्ञातः पश्चात् सजातीय भार्य्यायां जातः स सर्व्वेभ्योऽंशंलभेत। तथा विष्णुः। पितृविभक्ता विभागान-न्तरोत्पन्नस्य समं दद्युः। विभागोत्तरञ्च गर्भाधाने मनुराह। ऊर्द्धं विभागा ज्जातस्तु पित्र्यमेव हरेद्धनं। संसृष्टा स्तेन वा ये स्युर्विभजेत सतैः सह। दृश्याहेति विभागकालप्राप्तमायव्ययशोधितं यावद्धनमुपलभ्यते ततो धनात् स्वांशं लभेत।

मातापितृभ्यां यस्य पुत्रदुहितृभार्य्यादे र्यदलङ्करणादि दत्तं पितुपरमेऽपि न तद्विभजनीयम्।

पितुर्मरणान्तरं विभागं कुर्व्वतां पुत्राणां माता पुत्रसमभागं गृह्णीयात्। तथा पितेत्यनुवृत्तौ बृहस्पतिः। तदभावे तु जननी तनयांशसमांशिनी। विशेषमाह व्यासः। असुतास्तु पितुः पत्न्यः समानांशाः प्रकीर्त्तिताः। पितामह्यश्च सर्व्वास्ता मातृतुल्याः प्रकीर्त्तिताः।

असंस्कृतेत्यादि। पूर्व्वसंस्कृतैर्भ्रातृभिः पितुरूर्द्ध्वं पैतृकादेव धनात् असंस्कृता भ्रातरो जातकर्म्मादिना संस्कार्य्याः। भगिन्योऽपि स्वधनाच्चतुर्थमंशं दत्वा तेनैव धनेन विवाहादिसंस्कारेण संस्कार्य्याः। समांशा भ्रातरस्तेषां तुरीयांशाश्च कन्यकाः। कन्याभ्यश्च पितृद्रव्याद्देयं वैवाहिकं वसु। अपुत्रकस्य कन्या या धर्म्मार्थं पुत्रवद्धरेत्। स्ववित्तानुसारेणेत्याह विष्णुः। अनूढायान्तु कन्यायां स्ववित्तानुसारेण संस्कारं कुर्य्यात्। चतुरित्यादि। ब्राह्मणेन ब्राह्मण्यादिषु चतसृषु जाताः पुत्रा दशधा विभक्ते धने चतुरस्त्रीन् द्वावेकं चांशं यथाक्रमं गृह्णीयुः। एवं क्षत्रियेणेत्यादि बोध्यं।

अथलुप्त विभागमाह अन्योन्येत्यादि। यद्गोपितं तद्विभजनीयं। ऋणेऽप्येतदित्याह मनुः। ऋणेधने च सर्व्वस्मिन् प्रविभक्ते यथा विधि। पश्चाद्दृश्येत यत् किञ्चित् तत् सर्व्वं समतां नयेत्। * * * * *

भ्रातृपुत्रसद्भावेतु क्षेत्रजादयः प्रतिनिधिपुत्रा नाधिकारिणः यथा मनुः। भ्रातृणामेक जातानामेक श्चेत् पुत्रवान् भवेत्। सर्व्वे ते तेन पुत्रेण पुत्रिणो मनुरब्रवीत्। ततश्च भ्रातृपुत्राभावे क्षेत्रजादिपुत्रकरणं। सपत्नीनामप्यपुत्राणां सपत्नीपुत्रसद्भावे सएव। यथा मनुः। सर्व्वासामेकपत्नीनामेकाचेत् पुत्रिणी भवेत्। सर्व्वास्तास्तेन पुत्रेण प्राह पुत्रवतो मनुः। एकपत्नीनां एकपतिकानां। सजातीयेष्वित्यादि। योऽयमौरसादि पुत्रेषु विधिः व्यक्तः। क्रीतव्यतिरेकेण समानजातीयेषु प्रतिपत्तव्यः। दास्यां शूद्रेण जातः पितुरिच्छातः इतरपुत्रतुल्य भागहरो भवेत्। मृत इत्यादि। मृते तु पितरि पितृपरिणीता पुत्रास्त दासीपुत्रकमर्द्धभागिकं कुर्युः। यदि ते तथाविधा भ्रातरः तथाविधदुहितृजातः पुत्रोनास्ति तदा स एव सर्व्वं गृह्णीयात्।

अपुत्रधनविभागमाह पत्नीत्यादि। पत्यभावे दुहितर इत्यादि बोध्यं। सब्रह्मचारी सहाध्यायी। एषामित्यादि। पूर्व्वपूर्व्वाभावे उत्तरोत्तरधनभागी। तथा विष्णुः। अपुत्रधनं पत्न्यभिगामीत्यादि। कुल्येषुविद्यमानेषु पितृभ्रातृसनाभिषु। असुतस्य प्रमीतस्य पत्नी तत् भागहारिणी। अयञ्च भ्रातृसद्भावे पत्न्यधिकारो-गुणवत्पत्नीविषयः गुणश्च श्वाशुरश्व्यापालनादिरूपः। वृद्धमनुः। अपुत्रा शयनं भर्त्तुः पालयन्ती व्रते स्थिता। पत्न्येव दद्यात् तत् पिण्डं कृत्स्नमंशं लभेत च। एवं वाप्रजस्य स्वर्य्यातस्य भ्रातृगामि द्रव्यं तदभावे पितरौ हरेतां। पत्नी वाज्येष्ठेति पैठीनसिवचनम्। निर्गुणव्यभिचारिणिभ्रातृपत्नीविषयं। भरणं वास्य कुर्व्वीत स्त्रीणामाजीवनक्षयात्। रक्षन्ति शय्यां भर्त्तुश्चेदाच्छिन्द्युरितरासु च।

इति शङ्खवचनमप्येतद्विषयमेव वर्णनीयं। पुत्राभावे तु दुहिता तुल्यसन्तानदर्शनात्। पुत्रश्च दुहिता चोभौ तुल्यसन्तानकारकौ इति नारदवचनं पुत्रिकापुत्रविषयं। बृहस्पतिः। सदृशी सदृशेनोढा साध्वी शुश्रूषणेरता। कृताकृता वा पुत्रस्य पितुर्धनहरी तु सा। कृता वाकृता पुत्रिकात्वेन। अकृता न वाक्कृता मानसीत्यर्थः। अतो दुहितरस्तथेति। भ्रातृसद्भावे पित्रोरधिकारः। पितृपितामहाद्यर्ज्जितधनविषयः। यत् पितृद्रव्यविरोधेनार्ज्जितं तत् पित्रोः सद्भावे भ्रातृणामेव यथा देवलः। ततो दायमपुत्रस्य विभजेरन् सहोदराः। तुल्यदुहितरो वापि ध्रियमाणः पितापिवा। एषामित्यादि। एषां पत्न्यादीनां पूर्व्वपूर्व्वाभावे परः परः। स्वर्यातो मृतः।

वाणप्रस्थेत्यादि। धर्म्मभ्रातात्र्चामावेकतीर्थी चेति कर्म्मधारयः। एकतिर्थी समानगुरुः। व्यक्रमपरम्।

संसृष्टीत्यादि। संसृष्टी बृहस्पतिनोक्तः विभक्तो यः पुनः पित्रा भ्रात्रा चैकत्र संस्थितः। पितृव्येनाथ वा प्रीत्या सतु संसृष्ट उच्यते। संसृष्टिनो भ्रात्रादेर्मृतस्यांशमपरसंसृष्टी वा भ्रात्रादिरपहरेत् गृह्णीयात्। सोदरस्तु संसृष्टिनः सोदर एव संसृष्टी गृह्णीयात् न सापत्नः। यदि गर्भमुत्पाद्य संसृष्टी मृतस्तदा तदपत्ये जाते तस्यांशं तस्मै अयच्च संसृष्ट्यधिकारः पुत्रपत्नीपितृभ्रातृभावे। संसृष्ट्यधिकारे यथा बृहस्पतिः। यदि कश्चित् प्रमीयेत प्रव्रजेद् वा कथञ्चन। न तस्य लुप्यते भागः सोदरस्य विधीयते। अनपत्यस्य धर्म्मोऽयमभार्य्यपितृकस्य च। अन्योदर्य्य इत्यादि। अन्योदर्य्यः संसृष्टी नान्योदर्य्यधनं हरेत्। असंसृष्टापि सोदर एव गृह्णीयात्। नतु संसृष्टः सापत्न्य भ्राता। असंसृष्टो गर्भं संसृष्टः। सोदर इति केचित्। नान्योदर्य्यो धनं हरेदिति पाठे अन्योदर्य्यः सन् धनं गृह्णीयादिति व्याख्या। असंसृष्टिसोदराधिकारार्थमिदं। अतो न पुनरुक्तिः। संसृष्टिनां पुनर्विभागे समविभागो यथा मनुः। विभक्ताः सहजीवन्तो विभजेरन् पुनर्यदि। समस्तत्र विभागः स्यात् ज्यैष्ठ्यन्तत्र न विद्यते। विशेषमाह बृहस्पतिः। संसृष्टिनां तु यः कश्चिद् विद्याशौर्य्यादिनाधिकम्। धनं प्राप्नोति तस्य दातव्यो ह्यंशः शेषाः समांशिनः।

क्लीव इत्यादि। तज्ज्ञः पतितादुत्पन्नः। जड़ः स्वधर्म्मकृत्येषितत्साह। अन्धो जात्यन्धः। जात्यन्धबधिरौ तथेति मनुवचनात्। एते क्लीवादयो ग्रासाच्छादनादिना यावज्जीवं भर्त्तव्यं न भागाधिकारिणः। औरसेत्यादि।

एषां यथासम्भवमौरसाः चेवजाः पुत्राः पितृभागाधिकारिणः कार्य्याः। कन्याश्च तेषां यावन् न विवाहिता स्तावत् पोषणीयाः। अपुत्रेत्यादि। ऋज्वर्थः।

पितृमातृपतीत्यादि। अध्यग्नि अग्निसमीपे विवाहकाले पित्रादिभिर्दत्तं। आधिवेदनिकं। द्वितीयविवाहकाले यत् पूर्व्वपत्न्यै दत्तं। आधिवेदनिकाद्य-मित्यादिग्रहणादध्यावाहनिकादेर्ग्रहणम्। यथा कात्यायनः। यत् पुनर्लभते नारी नीयमाना हि पैतृकात्। अध्यावाहनिकं नाम स्त्रीधनं समुदाहृतम्। बन्ध्वित्यादि। पितृबन्धुमातृबन्धुभ्यां दत्तं। शुल्कमाह कात्यायनः। गृहोपस्कर-वाह्यानां दोह्याभरणकर्म्मणां। मूल्यं लब्धन्तु यत्किञ्चित् शुल्कं तत् परिकीर्त्तितं। अन्वाधेयमाह। विवाहात् परतो यत्तु लब्धं भर्त्तृकुलात् स्त्रिया। अन्वाधेयन्तु तत् प्रोक्तं लब्धं बन्धुकुलात्तथा। एतदासुरादिविवाहोढ़ाया मृताया धनं बन्ध्वादिदत्तं बान्धवा भ्रातरो गृह्णीयुः। यथा गौतमः। भगिनीशुल्कं सोदर्य्याणामूर्द्ध्वं मातुः पूर्व्वञ्चैके। ऊर्द्ध्वं मातुः पितुः परमित्यर्थः। माता पित्रोस्तु सद्भावे तयोरेव यथा मनुः। यत्तस्याः स्याद्धनं दत्तं विवाहेष्वासुरादिषु। अतीतायामप्रजसि मातापित्रोस्तदिष्यते। अप्रजेत्यादि। ब्राह्मादिषु विवाहेषु अनपत्यस्त्रीधनं भर्त्तृगामि। यदि तत्प्रसूताः कन्याः सन्ति चेत् तदा तासामेव। शेषेष्वासुरादिषु मातापित्रोरेव। मातृस्वस्रादीनां भर्त्तोद्यभावे धनाधि-कारित्वमाह बृहस्पतिः। मातृस्वसा मातुलानी पितृव्यस्त्री पितृस्वसा श्वश्रूः पूर्व्वजपत्नी च मातृतुल्याः प्रकीर्त्तिताः। यदासामौरसो न स्यात सुतो दौहित्र एव वा। तत्सुतो वा धनं तासां स्वस्रीयाद्यास्तदाप्नुयुः। भर्त्तुरभावे तद्धनं प्रत्यासन्नानां सपिण्डानामिति मिताक्षरा।

दत्त्वेत्यादि। पिता कन्यां दत्त्वा हरन् कारणं विना दण्ड्यो भवति इति। यश्चवरेण दत्तं हिरण्यादिकं तत् सवृद्धिकं कन्यापिता दद्यात्। वाग्दत्तायां तु कन्यायां मृतायां पितृसम्बन्धिनां वरसम्बन्धिनामुपचारार्थं यद्दत्तं तदुभयं परिशोध्य यदवशिष्टं तत् सर्व्वं वरो गृह्णीयात्। दुर्भिक्षेत्यादि। भोजनाद्यर्थेषु धर्म्मकार्य्ये परोपकारे। सम्प्रतिरोधके उत्तमर्णात् यद् गृहीतमित्यर्थः। अधिविन्नेत्यादि। कृतसपत्निकायै स्त्रियै अधिवेदननिमित्तं तुल्यं धनं देयं। तत् परिशीयमानायै यावद्दीयते तावदित्यर्थः। दत्ते तु स्त्रीधनेऽर्द्धं दद्यात्।

विभागेत्यादि। विभागापलापे सति ज्ञात्यादिभिर्विभागप्रतिपादनं ज्ञेयं। यद्वृत्तेनैव पृथग्भूतैः। तथाच नारदः। पृथगायव्ययधनाः कुसीदञ्च परस्परं वणिक्पथञ्च ये कुर्य्युः विभक्तास्ते न संशयः।

VIVADA RATNAKARA.

By Chandeswara.

CHAPTER I.

PARTITION OF HERITAGE.

Definition partition heritage.

1. Now about partition of heritage. On this Manu says: "Thus has been declared to you the law of woman and man based on sexual desire as well as the mode of having offspring in case of failure of issue; now listen to the law of partition of heritage." Narada says: "Where a partition of the paternal property is instituted by the sons, it is called by the learned partition of heritage, a title of law." "Where" means in what title of law. *Prakalpyate* means is instituted.

Partitic after father death.

2. Manu says: "After the death of the father and of the mother, the brothers being assembled may divide among themselves in equal shares, the paternal estate, for they have no power (over it) while the parents live." *Samam* here means in equal shares, *i e*, there the rule of the preferential share to the extent of one-twentieth does not obtain. But when Manu has ordained the rule of preferential share to the extent of one-twentieth in partition by those whose father is dead, how does he say *Samam* here? (The answer is,) that refers to the eldest and the like who are possessed of good qualities Udayakara explains 'Samam' as applicable to the residue of the estate after deduction of the preferential shares. Halayudha and the Parijata read *Saha* for Samam and the Parijata explains it as meaning mutually. Halayudha says that the word 'paternal' is an *Eksheshu* compound and includes also the maternal. Others say that in the word 'paternal' the property of the grandfather and the like is understood to be included, because of the text (of Yajnavalkya) "of property acquired by the grandfather, &c.," where share in such property is shown. Indeed both (maternal and grandpaternal) are understood but in the maternal estate, under ancient usage on failure of the daughter and her issue, the son and his issue (take) should be understood. Devala says: "When the father is dead, let the sons divide the estate of the father: for sons have not ownership while the father is alive and is free from defect." Free from defect means free from defects like being an outcast. Narada says: "The father

being dead, the sons shall divide the father's estate; (and so shall) daughters (divide the property) of their mother (when she dies); or failing daughters, their issue." The meaning is that the mother's estate the daughters divide and on failure of daughters their issue, *i.e.*, the issue of the daughters take. By the words 'the father being dead' only, partition being established the use of the word 'sons' is for including the Kshetraja and the other kinds of sons. Thus when there is any one of the twelve kinds of sons no other person can inherit. The word 'father's' is used to show that if among the brothers, one has property, like the gains of science, that should not be divided. The word *tat* following the word daughter properly means 'of her.' That is also the opinion of Lukshmidhara. The Prakasha and the Parijata however, say that the words 'their issue' means issue of the daughters such as son, grandson and the like. Sankha Likhita say: "Since partition of the estate takes place after his decease, sons can not divide it, while the father lives, though there be property subsequently acquired by them; they have no power, since they are not independent in respect of wealth and religious duties when the father is free from defect." 'Subsequently acquired' means acquired jointly by capable sons by means of learning and the like independently of the father.

Next follows a dissertation on the rights and duties of the eldest son which is not important and is omitted. The texts cited here are all to be found in Vol. I, Ch. IV.

CHAPTER II.

PARTITION DURING FATHER'S LIFETIME.

Property recovered by the father.

1. Now about partition during father's lifetime. On this Manu and Vishnu say: "If a father recovers lost paternal property, he shall not divide it, unless by his own will, with his sons, for (it is) self-acquired property." (In this text) 'paternal' means ancestral 'Lost' means could not be recovered. (Such recovered property) he, if unwilling, need not divide with the sons, because it is self-acquired.

In grandpaternal property father and son equal owners.

2. Yajnavalkya says: "In the acquisitions of the grandfather, whether they be land, any settled income or moveables, there is equal ownership of the father and the son." In this text Nibanda means that which is settled, *i.e.*, what is received permanently from a mine or the like. 'Equal ownership' means that the father has not a larger share and that there cannot be a gift at the father's pleasure. Vyasa says: "In houses and fields descended in regular course of succession the father and son are equal sharers; but in the property of the father (himself) the sons are not entitled to share against the will of the father." Vrihaspati

says: "Of property acquired by the grandfather, whether immoveable or moveable, father and son are declared to be entitled to equal shares. In grandpaternal property, once lost and afterwards recovered by the father, in self-acquired property and in what is acquired by learning or valour, the fathsr's power of disposal is declared. He may make a gift out of that property or even consume it at his will. But in his default, his sons are pronounced to be equal sharers." In this text lost means taken away by others and could not be recovered by the grandfather through inability but recovered by the father by his own efforts. (In such property) and in property acquired by learning or valour, the father has the power of giving away, &c. This is the meaning.

When can sons partition when father is alive.

3. On the subject when the sons can partition, Narada says: "When the mother has ceased to menstruate and the sisters are married or when the father's sexual desire is extinguished and he has ceased to care for worldly interests." In this text *Prattasu* means married; *Nibritte Ramane* means when the power of sexual enjoyment is lost; *Uparatasprihe* means when the desire for worldly things is extinguished. In the Prakasha, however, two readings, *i.e.*, *nirapeksha cha ramane* and *nraste cha ramane* are given but according to the interpretation given by him, the meaning in effect is the same. Halayudha reads *ramanat.* There also the meaning is the same. Vrihaspati says: "After the death of both parents, division of property among brothers has been ordained. It may take place even in their lifetime, if the mother be past child-bearing." Here also 'when the father's sexual desire is extinguished' is understood. Gautama says: "After the father's death, let the sons divide his estate. Or during his lifetime, when the mother is past child-bearing, if he desires it." Sankha and Likhita says: "Or partition of heritage, if allowed, is lawful when the father is alive and it may be made publicly or privately, according to Law." 'If allowed' means if allowed by the father. 'Publicly' means in the presence of arbitrators. Baudhayana says: "The division of the estate takes place only with the permission of the father." Hareeta says: "The father when living may distribute (the whole property amongst the sons) and retire to a forest or enter the order of old age; or he may distribute a small portion and continue to live in his house reserving the larger portion for himself. Should he lose, he may take back from them and to such as become indigent, he may give a portion." 'Retire to a forest' means betakes to a different order of life. The author of the Prakasha says that 'order of old age' means living on the son's wealth as a Vedic ascetic. 'Order of old age'

means the fourth order, according to Halayudha and Parijata. According to them 'retire to a forest' means adopts the order of Banaprastha In reality the particle 'or' signifies that it is a matter of indifference. Thus going to a forest and entering the order of old age being intended as at his option, he may adopt a different mode of residence or reside in the house In fact a Vedic ascetic desires to live as a householder but independent of others. It is with reference to him that 'he may distribute a small portion' should be understood as spoken *Upadasvet* means if he lose. Narada says: "Or let a father distribute his property among his sons himself, when he is not old, either allotting the best share to the eldest son or (distributing the property in any other way) following his own inclination." The particle 'or' means an alternative, *i.e.*, the father or the sons may partition. 'Not old' means not incapable.

4. Therefore Gautama says · "A son born after partition takes exclusively the wealth of his father." This speaks of division when a son is born after partition. 'Best' (in the text of Narada) means larger. The father may divide according to his own inclination by giving equal or unequal shares. Vishnu says: "If a father makes a partition with his sons, he may dispose of his self-acquired property as he thinks best." This refers to property acquired without help of the paternal property.

5. Yajnavalkya says: "A father when making partition can divide it among his sons as he pleases, either giving to the eldest the best share or in such wise that all share equally." This also refers to self-acquired property because of the right to equal share of the father and son in property acquired by ancestors has been declared.

Mothers entitled to equal shares.

6. In this connection also he (Yajnavalkya) lays down a special rule in reference to equal division: "If he give equal shares, such of his wives as have not received Stridhana from their husbands or father-in-law shall also equally share." If the father makes the sons equal sharers by partition, his own wives should also be made equal sharers. Thus when the sons are unequal sharers, the wives also become unequal sharers.

7. But the wives of sons and the like are not sharers, because the father is the person who partitions and the word wife should be understood in reference to him.

If any of the wives had not been given Stridhana by the husband or the father-in-law, she should be given an equal share of the wealth.

Sonless step-mothers sharers.

8. Halayudha in this connection says that the sonless wives of the father are also entitled to shares.

9. The Prakasha says that it is intended that when Stridhana had been given before, the wives should get half shares.

Half share when Stridhana had been given.

10. Narada says: "Two shares the father receives when distributing his property." In this text *pratipadyet* means receives. *Vibhajan* means partitioning. Vrihaspati says: "When a partition is made during father's lifetime, the father shall reserve a couple of shares for himself." This rule should be considered as applicable to the case when there is only one son. Thus with reference to the right of the father, Sankha and Likhita say: "If there be only one son, the father will take two shares, taking something additional from the bipeds and the quadrupeds." The meaning that by taking something additional, he will get two shares. Thus (they say): "A bull to the eldest and a house to the youngest, other than the father's residence." The meaning is that when there are many sons, if the eldest and youngest are meritorious, the bull is to be given to the eldest and the house to the youngest, even against the wishes of the father. Otherwise there will be the objection that the rule is meaningless. As regards the text of Yajnavalkya: "Or in such wise that all share equally." Halayudha says that that refers to the case where all the sons are of equal merit when there may be equal division or unequal division at the will of the father, and thus there will be no inconsistency. The Parijata explains the word *Ekaputra* as meaning the eldest son. But the commentator (of the Sankha Likhita) does not read the word *Putra* and reads 'if he is alone' and explains it as meaning that 'if he is alone without a wife, even then he takes two shares; if he has got a wife, she too should be satisfied with another share; *Rupamadhikam*, &c, means takes one from among the bipeds and quadrupeds in addition to two shares. The rule (of an additional share) is when the eldest and the youngest are meritorious, even against the wishes of the father, otherwise the rule becomes meaningless; Yajnavalkya's rule of equal shares applies when all are equally meritorious; when there is no excellence, equal or unequal division is at the option of the father; thus there is no conflict.' "Other than" (in the text) means, other than the house occupied by the father.

Father's double share on partition.

Baudhayana says: "He should divide his wealth among his sons, says the Veda. A father may therefore divide his property equally amongst all without making any difference. Or the eldest may receive the most excellent article. The Veda says: "Therefore they distinguish the eldest by an additional share of the property." "Or the eldest may receive in excess one part of the ten." The rest

divide equally. "Or the eldest may receive the most excellent article" means that the eldest takes one excellent article out of all things. Here the reason given is the authority of the Veda by citing "therefore, &c." The eldest son by getting the preferential share is distinguished from the other sons. The other alternative is that the eldest gets one in ten of each class of articles like cows, even against the wishes of the father. These alternative rules are to be applied as the eldest is possessed of more or less qualities. Apastamba says: "After having gladdened the eldest by one article, he should during his lifetime divide his wealth equally amongst his sons excluding the impotent, the insane and the outcast." "During his lifetime" means when he is incapable of begetting children. 'One article' means one excellent horse or the like By 'the impotent, &c.' is meant all disqualified heirs. The conclusion is that when there is superiority in merit, (the difference of the preferential share) is with reference to the greater or less extent of the property of the eldest.

Father's power of unequal division.

11. Manu says: "If undivided brethren together make an exertion for gain, the father shall on no account give to them unequal shares." Exertion means exertion for gain. Narada, Vrihaspati and Yajnavalkya say: "Those sons for whom their shares have been arranged by the father, whether equal, less or greater, must be compelled to abide by such arrangement. Otherwise they shall be punished." Narada says: "When a father has distributed his property amongst his sons, that is a lawful distribution for them, whether the share of one be less or greater than or equal to the shares of the rest; for the father is the lord of all." The first text (of Manu) forbids unequal distribution in case of joint acquisition by the brothers. The last is a text allowing unequal distribution of wealth acquired by the father. Thus there is no conflict.

*Next follow Chapters 3 and 4 which deal with partition after the father's death. Chapters 3 and 4 are omitted, excepting the portion dealing with the right of the mother, &c., as they deal with the unimportant subject of preferential shares. A discussion of that matter and the texts cited are to be found in the Mitakshara and the Smriti Chandrika.**

* In Chapter 3 there is a reference to an opinion of Harihar that the house of the god means the Mandapa where Durga is worshipped. This shows that the worship of Durga as prevalent in Bengal now was prevalent in Mithila in the 13th century.

CHAPTER IV.

PARTITION AMONG BROTHERS BY DIFFERENT MOTHERS.

THE SHARE OF THE MOTHER, THE SISTER AND THE GRANDMOTHER ON PARTITION AFTER FATHER'S DEATH.

1. Vishnu says : "Mothers shall receive shares proportionate to their son's share. And so shall unmarried sisters." As the word mothers is used in the plural number and as each of them should be a begetting mother, and as there is no authority for considering that one son is meant, the mothers of many sons are entitled to shares ; otherwise the text would refer to the reduction of shares according to caste. Graheswara also says that when there is one brother (*i.e.*, son of the deceased father) he enjoys the whole Yajnavalkya says : "If partition be made after the father's death, the mother shall also have an equal share."

Mothers of more than one son entitled to equal share.

2. Vrihaspati after promising 'father' says : "But on his death the (begetting) mother shall take a son's share. The (step) mothers shall share equally with the sons. The maiden sisters shall take fourth part shares." The begetting mother here refers to the mother with a son. The (step) mothers here refer to sonless wives of the father. Fourth part here is intended for one-fourth of the share of the brother of the same caste, to be allotted for the purposes of marriage. As regards the text of Vishnu : "Mothers shall receive shares proportionate to their son's share. And so shall unmarried sisters," that also intends that a fourth share should be given to the sisters, from this text, and in that text of Vrihaspati also, sister means unmarried sister.

Sonless step mothers entitled to equal shares and maiden sisters to one-fourth share.

3. Vyasa says : "But the sonless wives of the father are pronounced equal shares. Grandmothers also are declared equal to mothers."

Grandmother's entitled to equal shares.

CHAPTER V.

ON DISQUALIFIED HEIRS.

1. Next we go to the subject of disqualified heirs. On this Apastamba says : "Therefore all (sons) who are virtuous inherit. But him, who expends money unrighteously, he shall deprive of his share, though he be the eldest son." *Pratipadayati* means expends. Unrighteously means in gambling and the like. This is intended also to mean expenses inconsistent with the particular order of life in which one is. 'Deprive of his share' means deprive of so

Sons destitute of virtue and learning excluded.

much of his share as he has spent; some say, it means deprive entirely of his share Gautama says: "According to some the son of a woman of equal caste even does not receive (share), if he be living unrighteously" The learned say that it means that (it follows) that sons of different caste (are excluded). 'Receive,' *i e*, share. The alternative mentioned is in reference to cases where the unrighteous conduct is capable of correction or not so says the author of the Prakasha On this Manu says: "All brothers, addicted to forbidden acts, are unworthy of the share of the property." 'Addicted to forbidden acts' means addicted to gambling and the like Others say, it means addicted to squandering the family property On this Sankha Likhita say. "Of one who is excommunicated, the heritage, the funeral oblation and libation of water cease" Excommunicated means one who has been declared to be a person with whom water could not be taken from the same pot, on account of murder of the king and the like faults Vrihaspati says: "Though born of a wife of the same caste a son destitute of good qualities is unworthy to obtain paternal wealth, it shall go to those learned (kinsmen) who give him maintenance. The son delivers the father from debts to superior and inferior beings, a son who cannot fulfil this duty is of no use Of what use is having a cow which neither gives milk nor bears calves? For what purpose is a son who is neither learned nor virtuous? A son wanting in learning, courage and good purpose and devoid of austerity and wisdom and wanting in good conduct is like urine and excrement" 'Destitute of good qualities' is explained in the subsequent passage *Tatpindada* means those who give maintenance to the son destitute of good qualities

Manu's enumeration of disqualified heirs.

2. Manu says: "Eunuches and outcasts, by birth blind or deaf, the insane, idiots and the dumb, as well as those deficient in any organ receive no share. But it is just that (a man) who knows (the law) should give even to all of them food and raiment for life; he who does not give it becomes an outcast If the eunuch and the rest should somehow or other desire to take wives, the offspring of such among them as have children is worthy of share."

(In the above text) by the mention of 'by birth' it is intended that blindness to disqualify must be incurable and not congenital alone 'Idiot' means one unable to discriminate what is his own and what is another person's. 'Deficient in any organ' includes the lame and the like, who are not entitled to perform the Vedic and the Smarta ceremonies. 'Even to all of them' means to eunuchs and the rest. *Atyantam* means for life. (In the third verse) the word 'eunuch and the rest' is a compound formed

in the way of *Atadguna Vahubrihi* and thus means all the rest except the eunuch, because the eunuch is incapable of raising issue The author of the Prakasha, however says that it is intended to mean such a person whose impotence to raise issue can be subsequently cured and thus the compound is not an *Atadguna Vahubrihi*. *Tantu* means children.

Yajnavalkya's rule.

3. Yajnavalkya says: "An impotent person, an outcast and his son, one lame, a mad man, an idiot, a blind man and a person afflicted with an incurable disease as well as others (similarly disqualified) must be maintained being excluded from participation" (In the text) 'his son' means one born after being outcast. Idiot means one whose mind is out of order. 'Incurable disease' means incurable disease like leprosy 'As well as others' means that others declared disqualified heirs by other Rishis but who should be maintained, is included.

Rights of sons, daughters and wives of disqualified heirs.

4 The impotent and the rest having been declared shareless, lest their sons also be considered shareless, therefore he (Yajnavalkya) says: "But their sons, legitimate or Kshetraja, are entitled to shares, if free from similar defects Their daughters must be maintained likewise until they are made over to husbands." With reference to the married wives of the impotent and the like, (Yajnavalkya) says: "And their sonless wives conducting themselves aright must be supported, but such as are unchaste should be expelled and so indeed those who are hostile" Hostility (in the text) means administration of poison and the like and not a mere disposition to quarrel

Narada's rule.

5. Narada says: "One hostile to his father, or expelled from caste or impotent or excommunicated for grave offence shall not even take a share (of the inheritance) if he is a legitimate son; much less so, if he is a Kshetraja son. Persons afflicted with chronic or acute disease or idiotic or mad or lame (are also incapable of inheriting). They shall be maintained by the family; but their sons shall receive their respective shares (of the inheritance)." One who hates his father is 'hostile' to him. Hatred signifies beating and the like when living and omission to offer oblation of water and the like to him when dead. *Apapatrita* means one with whom the relations would not drink water from the same pot. The Prakasha reads *Aupapataki* and explains as meaning tainted with grave sin of secondary order. Chronic disease means consumption and the like. Acute disease means leprosy and the like. *Bhartavya* means must be maintained. 'By the family' means by brothers and the like.

Devala's rule about false ascetics

6. Devala says: "When a father is dead, an impotent person, a leper, a madman, an idiot, a blind man, an outcast,

the offspring of an outcast and a hypocrite wearing the token of a religious mendicant are not entitled to a share of the heritage. Food and raiment should be given to them excepting the outcast. The sons of such persons being free from similar defect shall obtain their father's share of the heritage" (In the text) dead means even when he is dead. Lingee means one who out of great hypocrisy assumes the character of an ascetic.

Vishnu's rule.

7. On this Vishnu says: "Outcasts, eunuchs persons incurably diseased, or deficient in bodily powers do not receive a share. They should be maintained by those who take the inheritance. And their legitimate sons receive a share. But not the children of an outcast; provided they were born after the act on account of which they were outcasted. Neither do children begotten on women of higher castes receive a share. Their sons do not even receive a share." *Riktagrahina* means those who take shares of the inheritance.

Baudhayana's rule.

8. Baudhayana says: "Granting food, clothes (and shelter) they shall support minors, who are incapable of transacting legal business, the blind, idiots, eunuchs, those immersed in vice, the incurably diseased and so forth and those who are disqualified from performing religious sacrifices; but not the outcast nor his offspring." Ateetbyabaharan means minors. *Akarmina* means those who are disqualified from performing religious sacrifices and the like. So (the Smriti) says: "Wealth is made for sacrifices. Therefore it should be appropriated to fit and virtuous persons, and not to women, ignorant and irreligious men or infidels." As all intercourse is prohibited with an outcast and his offspring, they should not be maintained.

Vasista's rule.

9. Vasista says: "But those who have entered a different order receive no share." Different order means an order other than that of the house-holder.

Gautama's rule.

10. Gautama says: "An idiot and a eunuch must be supported. The (male) offspring of an idiot if worthy receives his father's share. The son of a wife of superior caste should be maintained like the son of a Sudra wife." 'If worthy' means when he is qualified (being free from defect) and not that every son of an idiot receives a share.

Rights of children born of wives irregularly married.

11. The children born of wives of superior castes should be given maintenance when they serve, like the son of a Sudra. Katyayana says: "Thus also the son of a woman married in an irregular order, and one born of a woman of the same Gotra as well as an apostate from a religious order are unworthy of the inheritance. But the son of a woman married in an irregular order becomes an heir if he belongs to the same caste with the father: and so may the son

begotten by a man of different caste on a woman married in regular order: the son of a woman married in inverse order is not entitled to the inheritance; food and raiment for life should be given to him by the kinsmen. But in default of kinsmen he can take the paternal wealth. The kinsmen shall not be compelled to maintain him when the wealth received by them did not belong to his father." The son of a woman married in regular order means one born of a woman of a different caste married in contravention of the order laid down in the Shastras for the marriage of girls of different castes. Later on the rule that the son of a woman of the same caste married in irregular order is an heir refers to the son of one married in the above irregular manner. 'One born of a woman of the same Gotra' means one born of a woman who is married though of the same Gotra. 'Apostate, &c.,' means one who having adopted the life of an ascetic afterwards gives it up. 'But the son of a woman married in an irregular order, &c.', means that if the son of a woman married in an irregular order is of the same caste he is an heir, and so is the son of a woman of a different caste married in regular order. 'Son of a woman married in inverse order, &c.,' means that the son of a man of inferior caste by a wife of a superior order married by him is not an heir. 'Food and raiment, &c.,' means that if he has got kinsmen then he should be given by them food and raiment for life. If there be no kinsmen he himself should take the estate. If the wealth received by the kinsmen is not his paternal property, they cannot be compelled to give food and raiment even.

Initiatory ceremonies of brothers.

11. Vrihaspati says: "Brothers should perform the ritual ceremonies of younger brothers whose ceremonies had not been performed, out of the joint paternal wealth." Some say that the word Yaviyasha is an incorrect form for Yaviyasha, omitting the *na* and the long *a*, and is good because used by a Rishi. Others say that Yaviyasha means 'of the younger' qualifying *Madhyagat*, &c. Vyasa says: "Brothers whose initiatory ceremonies have been performed shall get those ceremonies performed of those brothers whose initiatory ceremonies have not been performed, from the paternal wealth, and also of the unmarried sisters in due form." The Sanskara of daughters means their marriage. Narada says: "For those brothers of whom the initiatory ceremonies have not been duly performed by their father; they must be performed by the other brothers defraying the expenses from the paternal property. When there is no paternal wealth, the brothers initiated should get the initiatory ceremonies of the uninitiated brothers, contributing funds out of their own property." Initiatory ceremonies

mean ceremonies beginning with the birth ceremony and ending with the investiture with the sacred thread.

Unmarried sister's portion.

12. Devala says: "To the unmarried daughters should be given (a portion of) the estate of the father as marriage portion. The legitimate daughter of a man without male issue shall take his wealth like a son." Yajnavalkya says: "But sisters shall be disposed of in marriage giving them as an allotment the fourth share." Vishnu says: "The unmarried daughters should be married defraying the expenses according to the extent of the estate." Manu says: "But to the maiden (sisters) the brothers shall severally give portions out of their shares, each out of his share, one-fourth part; those who refuse to give it will become outcasts." The meaning is not that a fourth part should be given of the share of each but it is intended that the fourth part of the share which a son of a particular caste gets, should be given to daughters of that caste for marriage. The meaning thus is that out of the entire 4 shares of the son of the Brahmani wife and 3 shares of the son of the Kshatriya wife, a fourth part should be given. A fourth share being mentioned in many texts, the fourth share should be given but the object of it is marriage In the rule of Vishnu the same import should be attributed. The Kalpataru, the Prakasha and the Mitakshara say the same thing. The opinion of Halayudha and others is that from the text of Vishnu it appears that the giving of a fourth share is illustrative, the meaning being that that as much of the wealth should be given as is necessary for marriage. This is proper because it is right that marriage which is indispensable should be performed. Katyayana says: "But a fourth share is ordained for a daughter not given in marriage and three shares for a son: but when the property is small her ownership is ordained." 'When the properly is small, &c.,' means when the fourth share is small and the marriage can be performed only with a larger amount, the daughter has right to as much wealth as is necessary for marriage. Therefore that much wealth the brothers must give out of their shares, for her marriage. Daughters get tbe Stridhana obtained by the mother at marriage, even when she is living. Sankha and Likhita say · "When partition takes place the unmarried daughter gets the ornaments of maidenhood of the mother and also Stridhana for marriage." Ornaments of maidenhood mean Nupura and the like. Baudhayana says: "The daughters shall obtain the ornaments of their mother (as many as are) presented according to custom or any thing else" The ornaments of the mother worn at the time of her marriage the unmarried daughter gets. If there is any other thing obtained by the mother at the time of marriage that also the maiden daughter gets.

Again Baudhayana says after premising a woman is entitled: "not to the inheritance, the Veda declares: "therefore women are considered Nirendriya and devoid of a portion." The Prakasha says that Nirendriya means without right to property. Adaya means shareless. All this however refers to females, excepting those for whom right to share has been prescribed.

CHAPTER VIII.

ON THE CHARACTER OF STRIDHANA.

1. On this Manu says "Women shall not appropriate anything out of the family (property) common to many, nor even out of her own without permission." The word family here by association means common property Therefore, out of the property of many, women should not appropriate any property without the consent of the owners; nor also from her own, *i.e*, from the property of the husband held not in common with the other members of the family, should she appropriate property, without the consent of the owners.

2. Manu and Vishnu say: "The ornaments which may have been worn by women during their husband's lifetime, his heirs shall not divide. Those who divide them become outcasts." **Ornaments worn Stridhana.**

Medhatithi according to the Prakasha says that an ornament worn for beauty with the permission of the husband, though not actually given by him, should not be divided by the coparceners. On this Apastamba says: "According to some, the share of the wife consists of her ornaments and the wealth (received) from her relations." Tbe wealth received from relations, &c., means that the wealth received at marriage, called Yautaka also belongs to the wife.

3. Narada says: "What has been given to a wife by her living husband, that she may spend or give away, as she likes, after his death even, excepting immoveables." The amount of property given by the husband on which the wife has independent power is there defined by Vyasa: "Property to the extent of two thousand Panas should be given to the wife. Such property also, as is given by her husband, she may enjoy according to her pleasure." From the word Dwishahasrapana, *i.e.*, the extent of, of which is two thousand Panas, it is intended that when the property is small, the gift should be small; and (the learned) say that from the text: "self-acquired property may be given away at pleasure," the above text refers to common propery. But **Amount of Stridhana over which a woman has power**

the Prakasha says that the text means that when the wives of incompetent husbands, who are entitled to maintenance, are separated they should not be given more than two thousand Panas.

Independent power over Saudayika meant for maintenance.

4 "Katyayana says: "By a woman or by a maiden, whatever is received from the husband's, father's family, from brothers, or from the parents is called Saudayika. The independence of women, who have received Saudayika gifts, is recognised to that property; for it is given by their kindred for their maintenance to avoid harshness. The power of women over gifts of their affectionate kindred is declared both in respect to sale and gift according to their pleasure even in case of immoveables." 'Husband's' refers to family. 'From brothers' is illustrative and means also from the parents. Thus whatever is received by a woman married or unmarried from the husband's or the father's family or from her own mother or father or from their kindred, is called Saudayika. *Anrisansyam* means harshness. Thus women receive property given by the father and others for maintenance, so that they may not be discontented and suffer for want of property.

Power over husband's twofold Daya.

5 But in respect of property given by the husband such independent power is in respect of all property excepting immoveables. (Katyayana says): "The husband's Daya a woman may deal with according to her pleasure, when the husband is dead; but when he is alive, she shall carefully preserve it; or if she is unable to do the same, she shall commit it to the care of his kindred. A sonless widow, keeping unsullied the bed of her lord and living with her father-in-law and others of the husband's family, shall being moderate enjoy until her death; afterwards the heirs shall obtain it." In this text 'husband's Daya' means property to which a woman gets a right in connection with her husband and that is two-fold: (One) to which a woman get a right on the death of the husband in default of any other heir, (and the other) to which a woman gets a right during the lifetime of the husband in connection to him. In regard to the first a woman, excepting immoveable property, can dispose it at pleasure and residing near her father-in-law, keeping chaste, she should pass her time.

Life interest in land obtained from the husband.

With reference to immoveable property the text says: "Shall enjoy until her death, afterwards the heirs shall obtain it." In regard to the second, (the text) says 'when he is alive she shall carefully preserve it,' *i.e.*, obeying the orders of the husband about spending, she should preserve such property. This interpretation is according to the Prakasha. The commentary of Halayudha and the Parijata however, say that 'husband's Daya' means Stridhana given

by the husband. But inasmuch as in respect of property going to a woman when the husband dies sonless, there will be an unfulfilled desire on account of deficiency of information, the opinion of the Prakasha is preferable ; and as such desire is more powerful, just as in the case of the provision about prohibition of women to appropriate property (mentioned above in the text of Manu), the rule that the interpretation should be restricted to the subject under discussion (*i.e*, Stridhana) should be disregarded.

6. Manu says : "In this manner should be protected women who are barren, sonless, without kindred and chaste and who are widowed or diseased If their kinsmen appropriate their Stridhana during their lifetime, they should be punished by the King with the punishment of a thief." *Basa* means barren *Aputra* means whose sons are dead. Without kindred means whose kinsmen on father's and mother's family are dead.

Power over Stridhana.

7. Devala says : "Property given for her maintenance, ornaments, property given to the bride by the husband for marriage, and wealth gained from kinsmen are declared Stridhana. She herself exclusively enjoys its, her husband has no right to use it except in distress. When needlessly wasted or enjoyed by the husband, it is returnable with interest. The appropriation of Stridhana for the relief of a son is proper." Here Britti means property given for maintenance Labha means wealth gained from kinsmen. Sulka means property given to the bride by the bridegroom for marriage. 'Needless waste &c, means when the husband having taken the property for necessary purposes uses it in unnecessary gifts or pleasure, he should repay it with interest. For the purpose of relieving the distress of a son Stridhans can be taken even without the consent of the wife.

8. Katyayana says : "Neither the husband nor the son nor the father nor the brothers can assume power over a woman's property to take it or bestow it. If any of these persons by force consume the woman's property, he shall be compelled to make it good with interest and shall be punished. If he enjoys it by permission given with pleasure, he should be made to repay the principal only, if he is rich. If the property had been given with pleasure, on seeing that he was deceased, in distress or oppressed by creditors, he may repay it if he likes." When a woman on seeing her husband and the like diseased, &c., gives wealth to her husband and the like out of her own pleasure, that may be repaid by the husband and the like at their pleasure only. This is the meaning of the last verse. Yajnavalkya says : "A husband is not liable to make good the property of his

wife taken by him in a famine, for the performance of religious duties, during illness or while under distraint." Religious duties means those that are indispensable. During illness means during such illness as prevents him from working; the husband if he takes wealth from the wife for the relief of such disease, it need not be returned to the wife.

9. Katyayana further says: "If the husband takes a second wife and does not love her, he should be made to return property given by the wife with pleasure. If food, raiment and residence be withheld from women, they may exact their own (Stridhana) and may likewise take a share from the heirs This is the laid down by Likhita When she has got them, she shall live in the husband's family. But if she be afflicted with disease and in danger of life, she may remove to her father's family. But a woman who does injurious acts, is shameless, wastes property or is unchaste, does not deserve Stridhana. Wealth is made for sacrifice. Therefore it should be appropriated to fit and virtuous persons, and not to women, ignorant and irreligious persons or infidels. Stridhana promised by the husband to a wife should be paid by the son as a debt of his, if she lives with the family of her husband and not, if she lives in the family of her father." When property has been given out of her own pleasure by the wife and the husband does not live with her, even after the catamenial period, or when food and raiment are withheld from her, then she may compel repayment of such Stridhana as had been given by her when the husband was diseased or the like. Though she should receive it without any labour still she may compel payment from the husband and the like. This is the law laid down in the text. When she gets back such property she should live with the husband's family. In case of serious illness, she may go to her father's family. This is the meaning of the text ending with 'family of her father.'

CHAPTER IX.

ON SUCCESSION TO STRIDHANA.

Rights of sons and daughters.

1. Next is determined partition of woman's property. On this Manu says: "But when the mother has died, all the uterine brothers and the uterine sisters shall equally divide the mother's estate." 'Equally' here means without the preferential share of the eldest.

2. By sisters (in the above text) are intended un-

married and unprovided sisters according to the text of Vrihaspati cited below. Sanabhaya means uterine.

3. (Again Manu says): "Even to the daughters (of those daughters) something should be given, according to their shares out of the estate of their maternal grandmother, on the score of affection." 'According to their shares' means according to the largeness and smallness of the property.

4. (Again Manu says): "And also a gift subsequent and what was given by her affectionate husband shall go to her offspring even if she dies in the lifetime of her husband" Gift subsequent would be defined later on. Halayudha says that this text is for the purpose of prohibiting husband's taking the above two kinds of property, when a woman dies during the lifetime of the husband.

5. Vrihaspati says: "Stridhana goes to the children and the unmarried daughter has a share in it If she is married, she shall receive an honorary trifle only." In this text 'offspring' means sons; 'has a share' means takes a share equal to that of a son. Apratta means unmarried. Thus on the strength of this text, the text of Manu should be interpreted as meaning that only unmarried sisters take equal shares with the sons. The married sisters should be given something according to their rank.

6. Gautama says: "A woman's separate property goes to her unmarried daughters and to poor unprovided daughters." This text is not meant for excluding the son's right to a share but for establishing the daughters right to a share. 'Unprovided' means married but childless or having a poor husband or widowed.

7 Manu says: "But whatever may be the Yautaka property of the mother that is the share of the unmarried daughter alone." Yautaka here means property given to a woman by her father and the like at the time of marriage. Halayudha says that Yautaka means property given to a woman for articles of food and saved by her skill and that in such property, brothers and married sisters have no shares, but the childless, and the widowed sisters take equally with the unmarried sisters.

8. Vasista says: "Let the daughters divide the Parinayya of their mother." Parinayya means dress, mirror, bracelet and the like.

Succession to Yautaka and Parinayya. These only taken by daughter's alone.

9. Yajnavalkya after premising 'divide after her death' says: "The daughters (divide) the residue of their mother's property after payment of her debts. In their default, the issue." In this text *Rinat* means after payment of the mother's debt; *Shesham* means the residue. Thus after payment of the mother's debts, the residue of the Yautaka and Parinayya property is taken by unmarried and

unprovided daughters. This is the meaning of this part of a text. In their *i.e.*, in default of the daughters, the issue *i.e.*, the son and the like of the daughter. This refers to women married according to approved forms like the Brahma. Likewise Vishnu after premising 'in marriages' says: "of all descriptions, if she dies leaving children, her wealth goes to her daughters."

Step daughter takes after husband and own children

10. Manu says "Whatever property may have been given by her father to a wife, that the daughter of the Brahmani co-wife shall take or her issue" When there are neither husband nor her own children living, and there are co-widows of different castes and their daughters, then the daughters of the Brahmani co-widow takes the property of the mother's co-widow which had been given to the latter by her father In her default, her issue take This is the meaning, the author of the Prakasha says that according to Ashahaya Medhatithi here property given by the father is symbolical of all kinds of Stridhana.

Brother's and husband's right.

11. Katyayana says: "In default of daughters that heritage (Stridhana) belongs to sons but what is given by Bandhus (parents) belongs to Bandhus, in their default, it goes to the husband Sisters having husband shall share with Bandhavas (brothers). This is the lawful rule of partition of Stridhana." The Yautaka and the Parinayya property given by the father go to sons in default of daughters. In regard to Stridhana other than these, heirs mentioned before take, in default of such above-mentioned heirs, it goes to the husband.

CHAPTER X.

ON SUCCESSION TO STRIDHANA OF CHILDLESS WOMAN ACCORDING TO FORMS OF MARRIAGE.

1. Now is discussed the rule of succession to the wealth of a childless woman according to form of marriage. Narada says: "Property of a woman shall go to her offspring; if she have no offspring, it is declared to go to her husband if she was married according to one of the four approved forms beginning with the Brahma form: if she was married according to one of the other forms, it shall go to her parents" The four forms are mentioned not for the purpose of excluding the fifth. Therefore the wealth of a childless woman married in Brahma, Dawa, Arsha, Gandharva and Prajapatya, on her death goes to the husband; the wealth of one married in one of the

other forms Rakshasha, Asura and Paisacha, goes to the father. This refers to property received at the time of marriage. Manu says: "It is ordained that the property of a woman married according to the Brahma, the Daiva, the Arsha, the Gandharva or the Prajapatya rite shall belong to her husband alone, if she dies without issue." Aprajayam means without issue. Devala says: "The property of a woman on her death is taken in common by her sons and maiden daughters: in default of issue, the husband, the mother, the brother or the father shall take."

2. On this subject Gautama says: "The sister's fee belongs to her uterine brothers, if her mother be dead. Some (declare that it belongs to them) even while the mother lives." (The meaning is that) whatever property is obtained by a woman married in disapproved forms beginning with the Asura, from her husband's house, on her death goes to the mother, in default of the mother, to the brothers. The expletive *cha* in *Purbamcha* means here even if. Thus even before the death of the mother, such property of the sister belongs to the uterine brothers is the opinion of some. Halayudha says that this is the opinion of persons other (than the Rishi Gautama)

3. Yajnavalkya says: "That which has been given to her by her kindred (Bandhu) as well as her Sulka and gifts subsequent her Bandhavas take them, if she die without issue." Sulka here means that by taking which the daughter is given away. Gift subsequent means that description of Stridhana. Bandhava here means uterine brothers. This text also refers to a woman married in disapproved forms of marriage beginning with the Asura.

4. Manu says: "But if an appointed daughter by accident dies without leaving a son, the husband of the appointed daughter may without hesitation take that estate." This also should be understood as referring to a case where the sonless daughter dies without a daughter or sister. So says Paithinashi: "If an appointed daughter dies sonless, her estate is taken not by the husband but by her daughter or by her sister." It means that failing a daughter, it is taken by the sister.

5. Yajnavalkya says: "A man withholding a damsel after affiancing her is liable to punishment and shall pay the expenses incurred with interest. If she die (after being affianced), he (the bridegroom) shall receive back what he has given, deduction being made for the expenditure on both sides." A person having betrothed by word a girl, withholding her from marriage without any fault of the bridegroom should be punished by the king and should

be compelled to pay all the expenses of the bridegroom with interest. But if there be good cause for such withholding, it is not blamable, for it is said (by Yajnavalkya): "If a bridegroom better than the previous one comes even the given (maiden) may be taken away." If by chance the betrothed girl dies, then whatever was given by the father for honouring the first bridegroom's relations and whatever rings and the like were given by such relatives: both these two being deducted *i e.*, being taken into account, (the bridegroom) shall receive the rest. Sankha says after premising "is entitled:" "the bridegroom himself to the fee given by him."

6. Baudhayana says: "The heritage of a deceased maiden, her uterine brothers themselves shall take; failing them, it belongs to the mother; failing her, to the father."

7. Vrihaspati says: "The mother's sister, the wife of a maternal uncle, a paternal uncle's wife, a father's sister, a mother-in-law and an elder brother's wife are declared to be equal to a mother If they have no legitimate son of the body, nor other son, nor daughter's son, nor their sons, their sister's son &c., shall inherit their property." The meaning is on failure of heirs beginning with the legitimate son of the body, the property of those beginning with the mother's sister is taken by those beginning with the sister's son.

CHAPTER XI.

Only cites the definitions of different kinds of Stridhana given in the texts of Manu, Katyayana, Yajnavalkya, Narada and Devala cited in Vol. I. It is therefore omitted.

CHAPTER XII.

Also only cites the texts on partition of concealed wealth which are to be found in Vol. I. This is also omitted as unimportant.

CHAPTER XIII.

RIGHTS OF SONS BY CONCUBINES AND BY WIVES OF SUPERIOR CASTES AND OF SONS OF SUDRAS BY DASIS.

It deals with the matter of succession of sons by wives of different castes. As such wives have long ceased to be allowable, the chapter is omitted, excepting the portion regarding maintenance of sons by irregular marriages and sons of Sudras

Vrihaspati says: "The son by a Sudra woman of a sonless person (of the twice born caste) if he serves, receives maintenance: the rest, his Sapindas get." This refers to a son of a Sudra woman not married from the tenour of the subject of unmarried women in connection of which the text is found. On this Gautama says: "The son of a Sudra woman receives from the estate of a sonless man a source of maintenance in the manner in which disciples get it, if he serves." The meaning is that the son of a Sudra woman not married, by one belonging to any of the three superior castes having no son of a twice born caste, receives a source of maintenance *i e*, some land for cultivation, for his maintenance, if he serves and in the manner of a disciple if he is obedient As regards the rule that to such a son what had been given by the father should be given, Sankha and Likhita say: "The son of a Sudra woman is not entitled to the estate. Whatever is given by the father to him is his share. Over and above that he should be given a bull and a cow, black iron and black paddy, excepting sesamum" This refers to the son of a Sudra woman who has not been married.

The son by a Sudra woman of a twice-born person.

Gautama says: "Sons born of wives of superior castes by inferior castes should be treated like sons of Sudra wives." The meaning is that sons begotten by fathers of inferior castes should merely get maintenance in the manner in which disciples get it.

Rights of sons by wives of superior caste.

Manu says· "A son who is begotten on a Dasi or on the Dasi of a Das of a Sudra, if permitted by his father takes a share of the inheritance: thus the law of inheritance is settled" 'On a Dasi' means on a woman who fulfils the character either of a woman captured in war or who becomes a slave in consideration of maintenance. 'On the Dasi of a Das' means on the female slave of a slave of the above characters or on an unmarried girl, the son born of a Das; 'if permitted' is so entitled. Thus is the law settled. The Kalpataru says that the text refers to the son of serving woman.

Right of sons of Sudras by Dasis.

Yajnavalkya says: "Even the son begotten by a Sudra on a Dasi shall have such share as the father may allot. But, after the father's death, the brothers are to assign him half a share." 'Kamata &c.' means receives a share at the father's option. After the father's death, if there be sons by married wives, then they should give half of the share each one receives to the son of the slave woman (Dasi). (Yajnavalkya) prescribes on failure of sons by married wives: "if there be no brothers nor daughter's sons, he takes whole." The meaning is that in default of sons married wives, on failure of the married wife, of the (legitimate) daughter

and of the son of the legitimate daughter, the son of a Dasi gets the entire estate after the death of the father. Thus in the Vivada Ratnakara is finished the subject of partition among sons by wives of different castes.

CHAPTER XIV

ON THE SHARE OF THE AFTERBORN SON.

1. Manu says: "But a son, born after partition, shall alone take the property of his father, or if any (of the other sons) be reunited with the father, he shall share with them." (The meaning is) that the sons having separated from the father, if another son be born thereafter, he shall take the entire share of the father, when the father is dead; during the lifetime of the father, he can get only a share out of the father's wealth. By the use of the word Eva, it is indicated that he has no right to any part of the share of the separated brothers. Vrihaspati says: "When the half-brothers or whole brothers have become separated from the father and they have brothers subsequently born, these latter shall take the father's share: one born before is not entitled to the father's share nor is one born after partition to the brothers' share." 'One born before' means one born before partition. Such a one has no right to the father's share and the son after partition has no right to the brother's share. Again (Vrihaspati says): "What is acquired by the father himself after having become separated from the sons, belongs to the son born after partition; those born before are ordained to be not entitled to it. As in wealth, so also in debts and in gifts, pledges and sales, they are independent of one another, excepting mourning, libations and exequial rites"

2. Yajnavalkya says: If a son be born of a wife of equal caste, after partition made, he is to share; or a share may be allotted from the estate as it is after allowing for income and expenditure." Vishnu says: "Sons who have separated from their father, should give a share to a brother who is born after partition." Both these texts refers to a son who was in the mother's womb at the time of partition but was born after partition. By this a son born after partition who was in the mother's womb at the time of partition, should be given his proper share by those who had separated by making it out of their own shares. Excepting such a son, a son born after partition gets only the share of the separated father as that is the opinion of Manu and others. The author of the Prakasha says that the son in the womb (mentioned above) refers to the case where the pregnancy

of the mother is not manifest, for when it is manifest, there can be no partition. Halayudha, however, after citing the text of Vishnu, cites the text of Yajnavalkya and says that the meaning is that if the son subsequently born of a wife of equal caste be meritorious then he gets a share out of equal caste be meritorious then he gets a share out of the entire visible property partitioned before; but if he is unworthy, he gets a share out of the remainder of the visible wealth such as land or the produce of the land such as paddy that have been grown, after paying the debts incurred by the brothers.

This finishes the chapter on the share of the afterborn son in the Vivada Ratnakara.

CHAPTER XV.

ON THE SHARE OF ONE RETURNING AFTER PARTITION.

1. On this Vrihaspati says: "Whether partition has or has not been made, whenever a co-heir appears, he is entitled to a share if he proves the existence of common property." Bhavayati here means proves that he has a share in the property Again (Vrihaspati says): "In a debt or a document, or a house or a field descended from the grandfather, one is entitled to his proper share when he returns after long absence. If a man leaves the family and resides in another country, the share of one born of his family must be given to him without doubt; the third, the fifth and the seventh descendant, if his origin and name are known, gets his share." The rule of Devala that (there is separation) in regard to descendants up to the fourth of undivided and divided co-parceners, refers to the case where the co-heirs are living together. This (text of Vrihaspati) refers to the case of living in countries distant and difficult of access. Again (Vrihaspati says): "Whom the principal residents and old neighbours know to be a co-owner by tradition, his descendant when he returns should be given his share of the land" This finishes the chapter on the share of one returning after partition.

Chapter 16 to 33, refer to succession by different kinds of sons. These are omitted, excepting chapters 24, 28 and 31, as unimportant, for succession by such sons has long become obsolete.

CHAPTER XXIV.

ON THE ADOPTED SON.

1. On this matter Vishnu says: "The adopted son is the eighth. And he who is given by his mother and **Qualifications of the adopted son.**

father to one," 'belongs to him' which is understood. Manu says: "That boy equal (by caste) whom his mother or his father affectionately gives with a libation of water in distress as her son must be considered as an adopted son. Of the man who has an adopted son possessing all good qualities, that same son shall take the inheritance, though brought from another family. An adopted son shall never take the Gotra and the estate of his natural father; the funeral cake follows the family name and estate, the funeral offerings of him who gives his son in adoption cease." 'In distress' means on failure of a male child; 'equal' means equal in caste; Medatithi, however, says that it does not mean equal in respect of caste but in respect of qualities peculiar to the family 'Affectionately' means without causes like fear 'Good qualities' mean caste, learning and good conduct 'Possessing all good qualities' is mentioned, the adopted son being entitled to the inheritance as such, in order to provide that, if a son is subsequently born, the adopted son possessing good qualities should take a share, while the adopted son without good qualities should be entitled only to maintenance 'Gotra' means the name of the original well-known Rishi ancestor like Kasyapa. By the general rule that the offering of the funeral cake follows the family name and estate, it also ceases. The word Svadha signifies Sraddha and the like.

Mode of adoption.

2. Vasista says: "Man formed of uterine blood and virile seed proceeds from his mother and his father as an effect from its cause. Therefore the father and the mother have power to give, to sell and to abandon their sons. But let him not give or receive in adoption an only son, for he is to continue the line of the ancestors. Let a woman neither give nor receive a son except with her husband's permission. He who desires to adopt a son after inviting his kinsmen, and announcing his intention to the king, should make burnt offerings in the middle of the house, reciting the Vyahritis, and take (as a son) whose kinsmen are near or even one whose kinsmen are not near But if a doubt arises, one whose kinsmen are at a distant place should be kept apart like a Sudra, for it is declared in the Vedas, "through one he saves many." The sale and abandonment, like gift, of a son should not be made. There can be sale only in distress and abandonment only in case of inability to maintain The Prakasha says in the case of failure of lineage, there is the great defect of failure of funeral cake, libation of water and obsequial rites and the like. The father and the mother each has right to give in adoption; but there is this distinction · when the father is present, the mother has the right with the father's permission only and has also the right when the father is absent or dead. 'After

inviting his kinsmen' means after assembling his own kinsmen in order to establish the right of the adopted son to the inheritance. 'Whose kinsmen are near' means whose relations like the maternal uncle are near; this is laid down so that the name, caste and the like may be known. When there are no kinsmen of his, one whose relations are not near may be adopted after ascertaining his name and Gotra from other strong evidence. This is the significance of the word *even* in 'even one whose kinsmen are not near.' The meaning of the words 'but if a doubt arises' is that if when a boy whose kinsmen are at a distance, has been for some reason or other been adopted, and the (twice-born) adopter becomes doubtful about his being of the Brahmana or the like (twice-born caste), then the adopted son should be kept like a son by a Sudra woman after making provision for his maintenance only. 'Through one he saves many' means by one son many ancestors are saved and therefore a boy should be adopted whose caste and the like are not doubtful This finishes the chapter on Dattaka in the Vivada Ratnakara.

CHAPTER XXVIII.

ON THE KRITRIMA SON.

Qualifications of the Kritrima son.

1. On this matter Manu says: "He who being equal and able to discriminate between merit and demerit and possessed of the qualifications of a son, is made a son, is known as a Kritrima son" Here also Medhatithi says equal means of equal good qualities; 'able to discriminate between merit and demerit' means one who knows that there is merit on performing the obsequial rights of the parents and demerit in not performing them. Possessed of the qualifications of a son, *i e*, of qualities like serving father.

2. Baudhayana says · "One who equal and having desire is made a son is called the Kritrima." 'Having desire' means thinking 'I shall become this man's son, if he will accept me as a son' and thus being desirous.

3. On this Yajnavalkya says: "Kritrima is he who is made by himself a son" Again says: "This is the rule mentioned by me, which is only applicable to sons of the same caste" 'In case of being of the same caste' the same caste should be considered as added to the text. The Prakasha says in case of the Kanina, the Gudhotpanna, the Sahodha and the Paunarbhava sons, being of the same caste is through their father and not in reality, because they do not fall within the definition of being born of the same caste. Thus ends the chapter on the Kritrima son in the Vivada Ratnakara.

CHAPTER XXXI.

ON THE EXTENSION OF THE IDEA OF SONSHIP.

Sons by analogy.

1. On this Manu says: "If among all the wives of one husband, one have a son, Manu declares them all to be mothers of male children through that son." Vrihaspati says: "If there are many uterine brothers born of the same father, on the birth of a son to one of them, they are all said to have a son Of women having one husband, the rule is that if one of them gets a son, he is the giver of the Pinda to all of them" All (in the first verse) means all by that son (are said to have a son).

When there is a brother's son among males or a step son among females there can be no adoption.

2 On this subject it is laid down by Asahaya that when, among males there is a brother's son, and among females there is a son of a co-wife, the different kinds of substitutes of sons, beginning with the Kshetraja should not be procured. The Parijata also says the same thing. Udayakara in the Manutika is of the same opinion. Thus ends the chapter on the extension of the idea of sonship

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CHAPTER XXXIV.

ON SUCCESSION TO THE ESTATE OF THE SONLESS MAN.

Widow's right.

1. On this Manu says: "(If the widow) of (a man) who died without leaving issue, raises up to him a son by a Sagotra, she shall deliver to that son the whole property which belonged to the deceased." 'The wife of the childless man having raised up issue by a Sagotra, *i.e.*, either by a younger brother of the husband or a Sapinda, shall make over to that son all the wealth to which accrued the right of her deceased husband, and should not take it herself.' This is the interpretation of the Parijata. The author of the Prakasha says that the king should cause issue to be raised to her by a Sagotra and give the property to the son so begotten In reality there is no difference between the two interpretations.

2. Vriddha Manu says: "A widow who is sonless, who keeps the bed of her lord unsullied and who strictly performs the duties of widowhood shall alone offer the cake at his obsequies and succeed to his entire share." Sonless here means not having any one of the twelve kinds of sons. Duties means duties prescribed for widows. Vrihaspati says: "In the revealed texts of the Veda, by the traditional law of the Smritis and on popular usage, the wife is declared

to be half the body of her husband, equally sharing the outcome of good and evil acts. Of him whose wife is not dead, half his body survives How should any one else take the property while half his body lives? Although kinsmen (Sakulyas), although his father and mother, although uterine brothers be living, the wife of him who dies without leaving male issue shall succeed to his share. A wife deceased before her husband takes away his consecrated fire (Agnihotra) but if the husband dies before the wife, she takes his property, if she is faithful to the husband. This is an eternal law. After having received all the moveable and immoveable property, the gold, base metals and grain, liquids and wearing apparel, she shall perform the monthly, the six monthly Sraddhas and the like Sraddhas. Let her propitiate with funeral oblations and pious liberality her husband's paternal uncles, Gurus, daughter's sons, sister's sons and maternal uncles, also aged persons and guests." Some say that a widow can perform the Parvana Sraddha also. In order to forbid that the monthly and six monthly Sraddhas and the like are enumerated and in it by the monthly, the twelve monthly Sraddhas are intended. By the term six monthly is meant the two Sraddhas performed on the day preceding the half-year. 'Like Sraddhas' means the Sraddha on the eleventh day, the Sapindikarana and the Sraddha to be performed every year on the anniversary of the day of death. Hence, it is intended that she should not perform any other Sraddhas, for these Sraddhas have been prescribed in other texts and a further mention here would be meaningless. 'Faithful to the husband' means chaste The casual form in the word *Dapayet* is a superfluity and is like the form in *Akarayat* in the sentence Rama reigned Udayakara, however, in his Manu Tika says that the word Patibrata (faithful to the husband) is used in its strict primary sense as being Patibrata must end with following the husband in death and thus the word *Dapayet* means cause to be performed by others. Many commentators, however, do not approve of this opinion as there would be no right of widows having qualities other than that of being *Patibrata* as mentioned above. Thus when there is a chaste widow surviving, she takes the estate of the sonless man.

Daughter's right.

3. In her default, the surviving daughter inherits as says Narada: "On failure of a son the daughter succeeds because she continues the lineage just like a son; both a son and a daughter continue the lineage of their father." Manu says: "A son is even as one's self; a daughter is equal to a son; how can another take the estate while one's self lives." Vrihaspati says: "A daughter like a son springs from each member of a man. How then should

any other person inherit her father's property while she lives. Equal in caste (to her father) and married to a man of the same case, virtuous habitually submissive, she shall inherit her father's property, whether she may have been expressly appointed or not."

Mother's right.

4. Vrihaspati says: "When a man dies without leaving either wife or male issue, the mother has to be considered as her son's heiress or a brother, if she consents." On this Manu says · "A mother shall obtain the inheritance of a son who dies without leaving issue, and if the mother be dead, the paternal grandmother shall take the estate." 'Without issue' here is intended to mean without the heirs beginning with the son and the wife. The right of the grandmother should be considered as accruing in default of father, brother and the like, because on failure of the mother, the right of the father and the like is established. *Dayadyam* means wealth which can be taken by the heirs. Gautama says: "The heritage of not united brothers deceased without male issue goes to the eldest brother." Among brothers not united, *i.e.* separated, the share of him who dies childless belongs to the eldest brother. This also should be understood in case of failure of wife, mother, or father.

Father's right.

5 Manu says: "The father shall take the inheritance of a son who dies without male issue or his brother. To the three ancestors water must be offered: to three the Pinda is given: the fourth is the giver, the fifth has no connection with them. Always to that (relative within three degrees) who is nearest to the deceased Sapinda, the estate shall belong: afterwards a Sakulya shall (be the heir) then the spiritual brother or the pupil." 'Without male issue' means without primary or subsidiary sons: *Anantar* means nearest; estate means estate of the sonless person. Sakulya here means Samanodaka. Paithinashi says: "The property of a sonless deceased person goes to the brother, failing him, the parents take or the inferior wife, Sagotra, pupil or fellow student." 'Inferior' wife is one who performs in a small measure the duties of a widow other than that of being *Pativrata* (as mentioned above), and not one who performs all such duties inasmuch as such a one is superior to the brother in the matter of succession to the husband's estate; nor is she one who is unchaste, for such a one should be turned out. Sabrahmachari here means fellow student. As regards the text of Sankha: "they shall make provision for his women till they die, in case they remain faithful to the bed of their husband. Should the women not (remain chaste) they must cut off that allowance:" this refers only to unchaste women who

do not perform the duties of widowhood. As regards the text of Yajnavalkya : "both parents, brothers likewise" which mentions the right of the parents, when there are brothers, that refers to wealth acquired by father, grandfather and the like. Whatever is acquired without help of the ancestral property belongs to the brothers, even when there are the parents Devala say : "Then the uterine brothers shall divided the heritage of a sonless person or the daughters or the surviving father, half-brothers of the same caste, the mother and the widow, in due order, failing them, those belonging to the same family living together." 'Equal' here means of the same caste. Surviving father is one who has also desire. On this, apprehending a conflict, Halayudha tries to avoid it by saying that 'in due order' here means according to the order laid down by Yajnavalkya and others and he has also written after premising 'this is the purport of the Shastras' that the order of heirs beginning with the Srotriya Brahmana refers to the estate of a sonless Brahmana and that ending with the king refers to the estate of a sonless person other than a Brahmana From this in the text of Sankha Likhita omissions have to be filled up and in the text of Devala the order should be supplemented by the order of Yajnavalkya and Vishnu after that of Devala. In reality, however, the rule in the text of Pathinashi that the estate of a sonless deceased person goes to the brother, refers to property other than what had been acquired by the father, grandfather and the like, and so also the rule 'failing him the parents take.' In the rest of the text there is no conflict.

Yajnaval kya's rule.

6. Yajnavalkya says: "The lawfully wedded wife (Patni) and the daughters also, both parents, brothers likewise, and their sons, gentiles, cognates, a pupil and a fellow-student, on failure of the first among them, the next in order is the heir to the estate of one who departed for heaven, being sonless. This rule extends to all classes." By the word Patni here a wife having excellent qualities is intended. By sonless here is intended also one without a grandson or great-grandson : this is the opinion of the author of the Prakasha and it is proper, being in accordance with usage. Though the words 'both parents' used conjunctively have the appearance of showing joint succession of both, still by virtue of the text (of Vrihaspati) : "when a man dies without leaving either wife or male issue, the mother has to be considered as her son's heiress," the right of the mother is shown on failure of wife and son without any regard to the father and therefore by it the father's right accrues in default of the mother is indicated. Vishnu says : "The wealth of a man who dies without male issue goes to his

wife; on failure of her, to his daughter; on failure of her to his father; on failure of him to his mother; on failure of her to his brother; on failure of him to his brother's son: on failure of him to Bandhus; on failure of them to Sakulyas; on failure of them to a fellow-student; on failure of him it goes to the king." The word Bandhu here means Sapinda; Sakulya means one of the same Gotra: this is the opinion of Misra

7. Vrihaspati lays down the rule of succession after the daughter and the daughter's son thus: "In default of them, uterine brothers or brother's sons, agnates and cognates, pupils or learned Brahmanas are entitled to the inheritance. When a man dies leaving no issue, nor wife, nor wife, nor brother, nor father, nor mother, all his Sapindas shall divide his property in due shares. Half the entire wealth however, shall first be set apart for the benefit of the deceased (owner) and carefully assigned for his monthly, six monthly and annual Sraddhas Where there are several relatives, agnates and cognates, whosoever of them is the nearest shall take the wealth of him who died leaving no issue." The locative form of the words monthly and six monthly is used to indicate the object

8. Apastamba says in reference to the childless man: "On failure of sons, the nearest Sapinda (takes the inheritance) On failure of them, the spiritual teacher. On failure of him, a pupil shall take (the wealth) and use it for religious works for the (deceased's) benefit. Or the daughter may take"

Baudhayana's text interpreted. Baudhayana says: "The greatgrandfather, the grandfather, the father, one's self, the uterine brothers, the son by a wife of equal caste, the grandson and the greatgrandson who are considered undivided co-heirs, they call Sapindas Those who are divided co-heirs are called Sakulyas. When there are no lineal descendants, the estate goes to those (mentioned above). On failure of Sapindas, the Sakulyas (inherit). On failure of them, the teacher, a pupil or an officiating priest shall take it On failure of him, the King." This definition refers to succession and not to pollution and the like, in the matter of which Sapinda means those who partake of the same body and thus even divided co-heirs are Sapindas, but in this text only those who are undivided co-heirs (described above) are Sapindas. Lineal descendants mean legitimate son and the like. 'Goes to those' means goes to Sapindas and others mentioned before.

Who take on failure of heirs. 9. Narada says: "On failure of daughters, the Sakulyas (are to succeed) and the Bandhavas; next a member of the same caste; in default of all that (wealth)

goes to the king, unless it should be the property of a Brahmana. But a king dovoted to duty must allot a maintenance to his women. Thus has the law of inheritance been declared." Sakulyas here mean those beginning with the paternal uncle's son. Sajati means of the same cas'e. The portion of the text beginning with 'but a king,' &c., refers to poor women of Brahmanas.

10. Manu says: "But on failure of all heirs, Brahmanas shall share the estate who are versed in the three Vedas, pure and self-controlled; thus the law is not violated. The property of a Brahmana must never be taken by the king, that is a settled rule; but the property of men of other castes, the king may take on failure of all heirs. The king takes the estate of all persons dying without heirs, excepting that of a Brahmana The estate of a Brahmana dying without heirs, he should cause to be made over to learned Brahmanas." Adayaka means without heirs. Baudhayana says: "The wealth of a Brahmana if appropriated kills the son and the grandson and is a poison that by itself kills. Therefore the king should never take a Brahmana's wealth. For this is a great poison, this wealth of a Brahmana." Vrihaspati says. "Should a Kshatriya, Vaisya or Sudra die without leaving male issue or wife or brother, their property shall be taken by the king for he is lord of all" Sankha and Likhita say: "The property of a learned Brahmana goes to the assembly of Brahmanas and not to the king The king should not take property settled on a god or a Brahmana as well as a deposit as Upanidhi deposit or ancestral property, nor the property of infants or of women, for it is thus said: 'a king should not appropriate a woman's property nor the property of an infant; the property of a woman is of six-fold origin and that of an infant is only paternal." Here Parishad (assembly) means Brahmanas. Upanidhi means a kind of deposit. In the Parijata 'ancestral property' is explained as that descending from father to son in succession. Six-fold origin means what is gained in the six-fold manner beginning with what is obtained before the nuptial fire.

King takes property of heirless persons.

11. Manu says: "The inheritance of a minor the king should preserve as long as he does not return from the Guru's house or does not become of age." Baladayagatam means the estate of which a minor is the owner. The king *anupalayet* means should preserve. Vishnu says: "The king should preserve the property of minors, helpless persons and women" Sankha and Likhita say: "The king should protect the property of minors and of the wives of learned Brahmanas and warriors; property without owner goes to the King." 'Wives of learned Brahmans and

Minor's estate.

warriors' mean wives of learned Brahmanas and warriors when they are absent at a distant place or are dead. In the chapter relating to the right of sons, Baudhayana says: "The shares of sons who are minors together with increase should be placed under good protection until majority of the owners". Sopachayan means with increase; Suguptan means under good protection The prefix *A* is used to signify limit and therefore (until majority) means before the seventeenth year. Katyayana says: "The share of a person who has gone abroad shall be preserved in its entirety: when a man having an infant son dies, his heritage should be preserved by the relatives of the son. The infants shall afterwards divide the same, according to their proper shares". Balputra means one having an infant son. Poganda means an infant incapable of transacting business.

Heir offers the Pinda.

12. Vishnu says: "And he who inherits the wealth presents the funeral oblation (Pinda) to the deceased. A text of a Smriti says: "He who takes one's property shall perform his Sraddha and shall offer Pindas to the three ancestors." The author of the Prakasha says that here Sraddha means the funeral oblations of the deceased appropriate to a single person. Vrihaspati says: "(For one leaving no male issue) a brother or brother's son or a Sapinda or a pupil should first perform the ceremony of uniting him with the Sapindas (to be worshipped at a Sraddha ceremony) and then offer him the funeral ceremonies customary on joyful occasions." Vasista says: "The son even when he does not get father's wealth should offer him Pinda."

Succession to the estate of ascetics.

13. Vishnu says: "The wealth of a (deceased) hermit shall be taken by his spiritual teacher, or his pupil." Yajnavalkya says: "The heirs to the property of a hermit, an ascetic and of a student in theology are in order, the preceptor, a virtuous pupil and a spiritual brother belonging to the same hermitage." 'In order' here means in the inverse order. Thus the wealth of a perpetual student is taken by the preceptor; the property of an ascetic by a virtuous pupil *i.e.*, one who is able to learn and understand spiritual philosophy and to perform necessary duties for that purpose. The property of a hermit is taken by a spiritual brother belonging to the same hermitage. Spiritual brother is one accepted as brother. Ekatirthi means belonging to the same hermitage. Though all this is inconsistent with the text of Vasista: "but those who have entered a different order" &c., still the (above rule) should be reconciled with it, by assuming that the deceased could be possessed somehow of property. Thus ends the chapter on succession to the estate of the sonless man in the Vivada Ratnakara.

CHAPTER XXXV.

ON THE PARTITION OF PROPERTY OF REUNITED PERSONS.

1. On this subject Manu says: "If brothers (once) divided and living (again) together, make a second partition, the division shall in that case be equal; in such a case there is no right of primogeniture." Living together means living reunited. 'Division shall in that case be equal' *i.e.*, there shall be no preferential share for the eldest. That is the meaning. Again (Manu says): "If the eldest or the youngest brother is deprived of his share or if either of them dies his share is not lost." If among reunited brothers one loses his share for becoming an ascetic or the like or dies, in that case his share is not lost. In answer to the question who takes it (Manu) says: "His uterine (brothers) having assembled together shall equally divide it and those brothers, who were reunited with him and uterine sisters." 'Uterine' *i.e.*, brothers. Therefore among reunited brothers, those that possess both qualifications which give a title, namely, being uterine and being reunited, take that share. This is the meaning. And sisters who are born of the same navel *i.e.*, who are uterine, who are also unmarried (take). The Prakasha says the married (sisters) obtain the Gotra of their husbands (and thus are not entitled). What is reunion.

2. Vrihaspati says: "When two coparceners have reunited out of affection, they shall mutually inherit each other's property." Again: "When brothers formerly divided are again living together through affection and arrange a second division, there is no preferential share for the eldest. When any one (brother) should die or any how renounce the world, his share is not lost: it is allotted to his uterine brother. If there be a sister, she is entitled to a share of his property. This is the law regarding the wealth of one destitute of issue and who has no wife or father. If among reunited coparceners any one should acquire property through learning, valour and the like, a double share must be given to him; the rest shall take equal shares." 'Learning, valour and the like' (means) through any other cause which will make the property, as not being common. Succession in case of reunion.

3. Narada says: "The share which belongs to reunited coparceners is declared absolutely to be their own. So when it is otherwise, (others become) partakers of share. When they all die without progeny their share goes to others that are not reunited who become partakers of share." 'So when it is otherwise' means in the absence of reunited coparceners. 'Without progeny' means childless. That share goes to 'others' *i.e.*, those who are

otherwise not entitled to shares *i. e*, those that are not reunited. The author of the Prakasha however says 'so when it is otherwise' means that in that case even when there are sons, they (the reunited brothers) take (and) when they die childless, their share goes to the brothers The Parijata however read's *Ato Anyatha Ananshabhaja* but that has been rejected as it is opposed to many books.

4. Sankha says: "If among several brothers one childless should die or become a religious ascetic, the others shall divide his property, excepting the Stridhana. They shall make provision for his women till they die, in case they remain faithful to the bed of their husbands. In the case of others they must cut off that allowance. She who is his daughter, her father's share is for her maintenance: she takes that share till marriage. Afterwards the husband shall maintain her." Women here means those who do not observe the austerities of widowhood but are not unchaste. (In the text of Vrihaspati mentioned before) 'one who has no wife or father,' wife (Bharya) means one who observes the austerities of widowhood and is chaste. In the Parijata however, 'women' (Striya) is interpreted as meaning wives of different caste (and) Bharya means a wife of the same caste married before. 'In the case of others' means in the case of unchaste women. 'Till marriage' means till marriage takes that part of the share which is sufficient for the completion of marriage: so says the Kalpataru.

5. Yajnavalkya says: "One reunited (takes the share of another) reunited (coparcener) (and also a uterine brother (takes the share of) another reunited brother; such a one delivers (back that share to a son subsequently born) and takes it when (the other) is dead" (The meaning is that) the estate of a deceased reunited coparcener, his other reunited coparcener takes and not one who is only his heir, (and likewise) the uterine brother takes the estate of the uterine brother and thus when there are a full-brother and a half-brother who are both reunited, the full-brother alone takes. Now Yajnavalkya ordains what would happen when there is an unreunited full-brother and when there is a reunited half-brother in case a reunited coparcener dies. "The reunited half-brother (takes the estate) but the unreunited half-brother does not take the estate. Even one united (as being born of the same mother) takes and not one born of another, mother." The half-brother not reunited does not take the estate; The sentence should end here. By the rule of association and dissociation, being a half-brother reunited is mentioned as the cause

of taking the estate and it is connected with the words and 'though reunited does not take' which occur later on; and thus even one unreunited takes the wealth and in reference to the question who is that person, says—the united or united as being born of the same seed and blood, *i.e.*, the uterine brother (takes). By this the cause of the unreunited being entitled to the estate is mentioned to be his being born of the same womb. As regards the reading adopted in the Kalpataru anyodoryodhanam (for anyodoryodhanam) the meaning is the same (in both the readings). The estate of the half-brother is meant by the word anyodoryodhanam and thus the estate of the reunited half-brother is not taken by a half-brother not reunited. Others put an easier construction and say that the meaning is that the reunited half-brother does not take the estate of another half-brother.

6. Katyayana says: "Of the reunited however, the reunited and of the separated, the separated are known to become heirs in default (of the widow and the like): each takes the share of the other, if childless." Of the reunited who are dead, the reunited are heirs and of the separated who are dead, the separated are known as heirs, in default *i.e.*, in default of the wife and the like. Nirbijanyonyabhagina is a compound word in the Danda form.

7. Vrihaspati says: "He who (having been) divided) is again living through affection together with his father or brother or with his uncle even, is said to be reunited with them." The term *Ba* (or) is used when the limit is not fixed, thus when a co-sharer divides his share with the son of his paternal uncle even and then lives with him, he is regarded as reunited by all the world. In the Prakasha however, it is said that by virtue of the text, the limit (of reunion being possible with the father, brother or uncle) is a strict one. Thus ends the chapter on partition of the share of the reunited coparcener in the Vivada Ratnakara.

With whom reunion is allowable.

Ch. 36 deals with determination of partitio[illegible] deals with the incidents of the separation. They cite the texts cited in Vol. I and mention nothing new and are therefore omitted as unimportant.

विवादरत्नाकरः

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दायभाग प्रकरणम्।

CHAPTER I.

अथ दायभागः। तत्सङ्गतौ मनुः। एष स्त्रीपुंसयोरुक्तो धर्म्मो वो रतिसंहितः। आपद्यपत्यप्राप्तिश्च दायभागं निबोधत॥ नारदः। विभागोऽर्थस्य पित्र्यस्य पुत्रैर्यत्र प्रकल्प्यते। दायभाग इति प्रोक्तं तद्विवादपदं बुधैः॥ यत्र यस्मिन् व्यवहारपदे, प्रकल्प्यते क्रियते। मनुः। ऊर्द्ध्वं पितुश्च मातुश्च समेत्य भ्रातरः समम्। भजेरन् पैतृकं रिक्थम् अनीशास्ते हि जीवतोः॥ समं तुल्यं, नात्र विंशोद्धारादीति यावत्। ननु प्रमीतपितृकविभाग एव मनुना विंशोद्धारादीनां कथनात् कथं सममिति चेत्, न, तस्य गुणवज्ज्येष्ठादिविषयत्वात्। उदयकरस्तु सममिति कृतोद्धारधनाभिप्रायमिति व्याख्यातवान्। हलायुध-पारिजाताभ्यान्तु सममिति स्थाने सहेति पठितं, व्याख्यातञ्च पारिजातेन, सह परस्परम्। पैतृकमित्यत्र एकशेषं कृत्वा तद्धितप्रत्ययः, तेन मातृधनस्यापि ग्रहणमिति हलायुधः। पैतृकमित्युपादानेऽपि पैतामहादिधनमपि विवक्षितम्, द्रव्ये पितामहोपात्ते इत्यादिवाक्येन तत्रापि भागस्य बोधनादित्यपरे। इयमपि चेदं विवक्षितं, परन्तु भूतपूर्व्वगत्या मातृधने तु दुहितृतदन्वयाभावे पुत्रतदन्वय इति बोद्धव्यम्। देवलः। पितर्य्युपरते पुत्रा विभजेयुर्धनं पितुः। अस्वाम्यं हि भवेदेषां निर्द्दोषे पितरि स्थिते। निर्द्दोषे पातित्यादिदोषरहिते। नारदः। पितर्य्यूर्द्ध्वं गते पुत्रा विभजेयुर्धनं पितुः। मातुर्द्दुहितरोऽभावे दुहितॄणां तदन्वयः। मातुर्धनं दुहितरो विभजेरन्, दुहितॄणामभावे तदन्वयो दुहित्रन्वयो विभजेदित्यर्थः। पितर्य्यूर्द्ध्वं गते इत्येतावतैव विभागे सिद्धे पुत्रग्रहणं क्षेत्रजादीनामप्यवबोधार्थं, ततश्च द्वादशपुत्राणामन्यतरस्मिन्नपि विद्यमाने नान्यस्य धनभाक्त्वं, पितुरिति वचनं भ्रातॄणां मध्ये यद्येकस्य विद्याधनादि विभजेत्, तदा तस्य विभागो नास्तीति बोधनार्थम्, दुहितुः सान्निध्यात्तत्पदेन तस्या एव परामर्शौचित्यात्। लक्ष्मीधरस्वरसोऽप्येवम्। प्रकाशपारिजातौ तु तदन्वयौ दुहि-

न्वय: पुत्रपौत्रादिरित्याहतु:। शङ्खलिखितौ। अत ऊर्द्ध्वमृक्थभागी न जीवति पितरि पुत्रा ऋक्थं विभजेरन् यद्यपि स्यात्मखादधिगतं तेरनर्हा एव पुत्रा:। अर्थधर्म्मयोरखातन्त्र्यात्पितरि निर्द्दोषे, पश्चादधिगतं पितृनिरपेक्षै: पुत्रै: समर्थैर्विद्यादिभिर्मिलित्वा अर्ज्जितम्। अथ मनु:। ज्येष्ठ एव तु गृह्णीयात्पित्र्यं धनमशेषत:। शेषास्तमुपजीवेयुर्यथैव पितरं तथा। ज्येष्ठेन जातमात्रेण पुत्री भवति मानव:। पितृणामनृणश्चैव स तस्मात्सर्व्वमर्हति। यस्मिन्नृणं सन्नयति येन चानन्त्यमश्नुते। स एव धर्म्मज: पुत्र: कामजानितरान्विदु:। पितेव पालयेत्पुत्राञ्ज्येष्ठो भ्रातॄन् यवीयस:। पुत्रवच्चापि वर्त्तेरञ्ज्येष्ठभ्रातरि धर्म्मत:। ज्येष्ठ: कुलं वर्द्धयति विनाशयति वा पुन:। ज्येष्ठ: पूज्यतमो लोके ज्येष्ठ: सद्भिरगर्हित:। यो ज्येष्ठो ज्येष्ठवृत्ति: स्यान्मातेव स पितेव स:। अज्येष्ठवृत्तिर्यस्तु स्यात् स संपूज्यस्तु बन्धुवत्। तथा। न चादत्त्वा कनिष्ठेभ्यो ज्येष्ठ: कुर्व्वीत यौतकम्। ज्येष्ठएव तु गृह्णीयादिति सकलज्येष्ठगुणवाञ्ज्येष्ठो विभाज्यपितृधने पितृवत्स्वतन्त्र: स्यात् इत्यर्थ:। तमुपजीवेयुस्तत्कृतवृत्त्या वर्त्तेरन्। पुत्रीभवति कृतापत्योत्पत्तिशास्त्रार्थो भवतीत्यर्थ:। मात्रग्रहणान्न संस्कारापेक्षा। अनृण:, त्रिभिर्ऋणैर्ऋणवाञ्जायते इति श्रुत्या यदृणत्रयं बोधितं, तस्मादेकस्मादुत्तीर्णो भवतीत्यर्थ:। सन्नयति सङ्गमयति। आनन्त्यं सुखानां, तेनानन्तं सुखमित्यर्थ:, अश्नुते प्राप्नोति ऋणमुक्त: सन्नित्यर्थ:। कामजानित्यर्थवादमात्रम्। कनीयसां भागबोधनेन भागाभावाबोधकत्वात्। पितेव पालयेत्, न तु विप्रलभेत्। पुत्रवच्चापि वर्त्तेरन्, न तत्र द्वेषं कुर्य्युरित्यर्थ:। कुलं वर्द्धयति, सम्यग्व्यापारेण कनिष्ठपरिपालनेन कुलवृद्धि:। विनाशयतीति योग्यतामात्रम्। ज्येष्ठस्य वृत्ति:, स्नेहेन कनीयसां भरणपालनादि। बन्धुवत् प्रत्युत्थानाभिवादनैर्मातुलादिवत् पूजनीयो नावज्ञाचरणेन। यौतकं, तेभ्य: पृथक्कृत्य कल्पितं द्रव्यं, मिश्रणे अमिश्रणे च युयातुपाठात्। हलायुधस्तु यौतकं भार्य्यालङ्कारादीत्याह। नारद:। बिभृयाद्वेच्छत: सर्व्वाञ्ज्येष्ठोभ्राता यथा पिता। भ्राता शक्त: कनिष्ठो वा शक्त्यपेक्षा कुले स्थिति:। शङ्खलिखितौ। कामं वसेयुरेकत: संहता वृद्धिमाचक्षीरन्। संहता अन्योन्यावलम्बनतया वृद्धिमाचक्षीरन् वृद्धिं स्फुटां कुर्व्वीरन्, वृद्धियुक्ता भवन्तीति यावत्। मनु:। एवं सह वसेयुर्वा पृथग्वा धर्म्मकाम्यया। पृथग्विवर्द्धते धर्म्मस्तस्माद्धर्म्म्या पृथक्क्रिया। पृथगित्यादि, मध्यगधनस्य स्वेच्छया अविनियोज्यत्वात् निरपेक्षस्वत्वास्पदद्रव्य-साध्य-यागाद्यनुष्ठानाभावात् तत्सिद्ध्यर्थोऽयं न्यायप्राप्तो विभाग उच्यते। पृथग्वा धर्म्मकाम्ययेति, न पुन:, अविभागादधर्म्म: कलञ्जभक्षणादिवत्, विभागाच्च धर्म्मो ज्योतिष्टोमादिवदिति। बृहस्पति:। एकपाकेन

वसतां पितृदेवद्विजार्चनम्। एकं भवेत्, विभक्तानां तदेव स्याद्‌गृहे गृहे। एकपाकेनेत्यत्राविभागे सतीति विवक्षितम्। हारीतः। जीवति पितरि पुत्राणामर्थादानविसर्गाक्षेपेषु न स्वातन्त्र्यं, कामदाने प्रोषिते चार्त्ते गते वा ज्येष्ठ एवार्थांश्चिन्तयेत्। अर्थादानं पितृनैरपेक्ष्येण साधारणधनग्रहणम्, अर्थार्जनमिति पारिजातः। विसर्गो दानं, आक्षेपः ऋणिकहस्तात्पुनर्ग्रहणम्। कामदाने काममाताद्येवार्थं दातरि। प्रकाशकारेण तु कामं दीने इति पठित्वा काममिति सन्निहितपित्रनुज्ञामाहेति, दीने विचित्ते इति विवृतम्। शङ्खलिखितौ। पितर्य्यशक्ते कुटुम्बस्य व्यवहारं ज्येष्ठः कुर्य्यादनन्तरो वा कार्य्यज्ञस्तदनुमतेन, नत्वकामे पितरि ऋक्थभागी, वृद्धे विपरीतचेतसि दीर्घरोगिणि वा ज्येष्ठएव पितृवदर्थान् पालयेदितरेषां, ऋक्थमूलं हि कुटुम्बम्. अस्वतन्त्राः पितृमन्तो मातर्य्यप्येवमवस्थितायाम्। अनन्तरोऽनुजः, तदनुमतेन ज्येष्ठानुज्ञया, विपरीतचेतसि वातादिदोषेण भ्रान्तचेतसि, ऋक्थमूलं धनमूलं कुटुम्बं कुटुम्बभरणम्, अस्वतन्त्रा दानाद्यनधिकारिणः, मातर्य्येवं गुणवत्यां जीवन्त्याम्-अस्वतन्त्राः पुत्रा इत्यन्वयः। इति विवादरत्नाकरे दायभागतरङ्गः।

CHAPTER II.

अथ जीवत्पितृकविभागः। तत्र मनुविष्णू। पैतृकन्तु पिता द्रव्यमनवाप्यं यदाप्नुयात्। न तत् पुत्रैर्भजेत्सार्द्धम् अकामः स्वयमर्जितम्। पैतृकं पितृक्रमागतम्, अनवाप्यं पित्रा आतुमशक्यं, न तत् पुत्रैः समम् अनिच्छन् विभजेत् स्वयमर्जितत्वात्। याज्ञवल्क्यः। भूर्या पितामहोपात्ता निबन्धो द्रव्यमेव वा। तत्र स्यात्सदृशं स्वाम्यं, पितुः पुत्रस्य चोभयोः। निबध्यते इति निबन्धः आकरादौ नियतं लभ्यं, सदृशं स्वाम्यं, नात्रांशाधिक्यं नवा पितुरिच्छया दानम्। व्यासः। क्रमागते गृहक्षेत्रे पिता पुत्राः समांशिनः। पैतृके न विभागार्हाः सुता, पितुरनिच्छतः। बृहस्पतिः। द्रव्ये पितामहोपात्ते स्थावरे जङ्गमे तथा। समर्मशित्वमाख्यातं पितुः पुत्रस्य चैव हि। पैतामहं हृतं पित्रा स्वशक्त्या यदुपार्जितम् विद्याशौर्य्यादिनाप्तञ्च तत्र स्वाम्यं पितुः स्मृतम्। प्रदानं स्वेच्छया कुर्य्याद्भागञ्चैव ततो धनात्। तदभावे तु तनयाः समांशाः सम्प्रकीर्त्तिताः। हृतं, परैरपहृतं

यत् अशक्त्या पितामहेन नोद्धृतं, स्वशक्त्या च पित्रोद्धृतं तद्, विद्याशौर्य्यादिनाप्तञ्च, पितैव कुर्य्यादित्यर्थः। अथ पुत्रा विभजेरन्नित्यधिकारे नारदः। मातुर्निवृत्ते रजसि प्रत्तासु भगिनीषु च। निवृत्ते वापि रमणे पितर्य्युपरतस्पृहे। प्रत्तासु विवाहितासु, निवृत्ते रमणे रतिसामर्थ्ये निवृत्ते, उपरतस्पृहे विषयस्पृहाविच्छेदवति, प्रकाशे तु निरपेक्षे च रमणे, निरस्ते चापि रमणे इति पाठद्वयं वाक्यभेदपुरस्कारेण लिखितम्, तदपि तदीयार्थव्याख्यानेन फलतोऽविरुद्धम्। हलायुधस्तु रमणादिति पठितवान्, तत्रापि फलाविशेष एव। वृहस्पतिः। पित्रोरभावे भ्रातॄणां विभागः संप्रदर्शितः। मातुर्निवृत्ते रजसि जीवतोरपि शस्यते। अत्रापि निवृत्ते चापीति विवेचितम्। गौतमः। ऊर्द्ध्वं पितुः पुत्रा ऋक्थं विभजेरन् निवृत्ते रजसि मातुर्जीवति पितरि चेच्छति। शङ्खलिखितौ। जीवति वा पितरि ऋक्थभागोऽनुमतः प्रकाशं वा मिथो वा धर्म्मतः। अनुमतः पित्रनुमतः, प्रकाशं मध्यस्थसमक्षं, मिथस्तदसमक्षम्। बौधायनः। पितुरनुमत्या दायविभागः। अथ हारीतः। जीवन्नेव वा विभज्य वनमाश्रयेत, वृद्धाश्रमं वा गच्छेत्, स्वल्पेन वा संविभज्य भूयिष्ठमादाय वसेत् यद्युपदस्येत् पुनस्तेभ्यो गृह्णीयात्, क्षीणांश्च विभजेत्। वनमाश्रयेत्, आश्रमान्तरं परिगृह्णीयात्। वेदसन्न्यासित्वेन पुत्रैश्वर्य्ये वासो वृद्धाश्रम इति प्रकाशकारः। वृद्धाश्रमः, चतुर्थाश्रम इति हलायुधपारिजातौ, तन्मते वनमाश्रयेदित्यनेन वानप्रस्थाश्रममाश्रयेदिति विवेचितम्। वस्तुतस्तु वाकारोऽनास्थायाम्, तेन वनगमनवृद्धाश्रमगमनत्वाभिमतादन्योऽपि स्थितिप्रकारो लभ्यते, तत्र वा वसेत्। वस्तुतो वेदसन्न्यासी गृहस्थाश्रममेव स्वातन्त्र्येण वाञ्छति, तं प्रति स्वल्पेनेत्यादि बोद्धव्यम्। उपदस्येदुपक्षीयेत। अत्र नारद। पितैव वा स्वयं पुत्रान्विभजेद्वयसि स्थितः। ज्येष्ठं वा श्रेष्ठभागेन यथा वास्य मतिर्भवेत्। वाशब्दो विकल्पार्थः, पिता वा पुत्रा वा विभजेयुः। वयसि स्थितः, पूर्व्वविशेषेण न हीनतया असमर्थ इत्यर्थः। अतएव गौतमः, विभक्तजः पित्र्यमेवेति,—विभागोत्तरकालं पुत्रोत्पत्तौ विभागमाह। श्रेष्ठः प्रशस्ततमोऽधिक इत्यर्थः। यथा वास्य पितुर्मतिर्भवति समाधिकभागेषु, तथा विभजेत्। विष्णुः। पिता चेत् पुत्रान् विभजेत्, तस्य स्वेच्छा स्वयमुपात्तेऽर्थे। पितृद्रव्यानुपघ्नेनार्ज्जितधनविषयमेतत्। याज्ञवल्क्यः। विभागञ्चेत्पिता कुर्य्यात् स्वेच्छया विभजेत्सुतान्। ज्येष्ठं वा श्रेष्ठभागेन सर्व्वे वा स्युः समांशिनः। एतदपि स्वार्ज्जितधनविषयं, पूर्व्वपुरुषार्ज्जिते पितापुत्रयोः समांशित्वाभिधानात्। अत्रैव समं विभागमाश्रित्य विशेषमाह। यदि कुर्य्यात्समानंशान् पत्न्यः कार्य्याः समांशिकाः। न दत्तं स्त्रीधनं यासां भर्त्रा

वा श्वशुरेण वा। यदि पिता पुत्रान् समांशान् कुर्य्यात्, तदा स्वपत्न्योऽपि समांशिकाः कार्य्याः। एवञ्च पुत्राणां विषमांशपक्षे पत्न्योपि विषमांशा बोद्धव्या, न तु पुत्रादिपत्न्यः, पितुर्विभाजकत्वात् तत्प्रतियोगिकपत्नीत्वस्यैवावगमात्। यदि तु कस्याश्चित् पत्न्याः भर्त्रा श्वशुरेण वा धनं न दत्तं, तदा ता अपि तावद्धनवत्यः कार्य्या इत्यर्थः। अत्र पत्नीनामपुत्राणामपीति हलायुधः। दत्ते स्त्रीधने अर्द्धं वक्ष्यतीति प्रकाशः। नारदः। द्वावंशौ प्रतिपद्येत विभजन् आत्मनः पिता। प्रतिपद्येत लभेत, विभजन् विभागं कुर्व्वाणः। बृहस्पतिः। जीवद्विभागे तु पिता गृह्णीतांशद्वयं स्वयम्। एतच्च शङ्खपर्य्यालोचनया एकपुत्रत्वे द्रष्टव्यम्। तथाच पित्रधिकारे शङ्खलिखितौ। स यद्येकपुत्रः स्यात्, द्वौ भागावात्मनः कुर्य्यात्, द्विपदचतुष्पदेषु रूपमधिकम्। रूपमधिकमिति, वस्तुस्वरूपमधिकं गृहीत्वा अंशद्वयं गृह्णीयादित्यर्थः। तथा। वृषभो ज्येष्ठाय, गृहं यवीयसे, अन्यत्र पितुरवस्थानात्। अस्यार्थः। नानापुत्रवत्त्वे ज्येष्ठकनिष्ठयोर्गुणवत्त्वे ज्येष्ठाय वृषभो दातव्यः, गृहं कनिष्ठाय, पितुरनिच्छयापि, अन्यथा नियमानर्थक्यापत्तेः। यत्तु याज्ञवल्क्येन, सर्व्वे वा स्युः समांशिनः, इत्युक्तं, तत्सर्व्वेषां तुल्यरूपत्त्वे पितुरिच्छया समांशित्वं न्यूनाधिकांशित्वञ्चेत्यविरोध इति हलायुधः। पारिजातस्तु एकपुत्रः ज्येष्ठपुत्र इत्याह। भाष्यकारस्तु पुत्रशब्दं न पठितवान्, यद्येकाकी स्यादिति पठितवान्, यद्येकाकी पत्नीविरहितोऽपि स्यात् तदाप्यंशद्वयं गृह्णीयात् सपत्नीकश्चेत् तामप्यपरेणांशेन तोषयेत्। रूपमधिकं, द्विपदचतुष्पदमध्ये एकम् अंशद्वयाधिकं गृह्णीयात्, ज्येष्ठयवीयसोर्गुणवत्त्वे चायमधिकविधिः पितुरनिच्छयापि, अन्यथा नियमानर्थक्यापत्तेः, याज्ञवल्क्योक्तसमांशित्वञ्च सर्व्वेषां गुणवत्त्वेन। उत्कर्षाभावे पितुरिच्छया समांशित्वं न्यूनाधिकांशित्वञ्चेत्यविरोध इत्याह। अन्यत्रेति पितृवास गृहवर्ज्जमित्यर्थः। बौधायनः। पुत्रेभ्यो दायं विभजेदिति श्रुति, समः सर्व्वेषामविशेषात्, वरं वा रूपमुद्धरेज्ज्येष्ठः, तस्मात् ज्येष्ठं पुत्रं धनेन निरवसाययन्तीति श्रुतिः, दशानां वैकमुद्धरेत् ज्येष्ठः, समम् इतरे विभजेरन्। वरं वा रूपमुद्धरेज्ज्येष्ठः, यावन्ति वस्तूनि तेषु एकं वरं गृह्णीयाज्ज्येष्ठ इत्यर्थः। अत्र श्रुतिं हेतुमाह तस्मादित्यादि, ज्येष्ठं पुत्रं धनेनोद्धरणलक्षणेन, निरवसाययन्ति इतरपुत्रेभ्यः पृथक् कुर्व्वन्ति, पक्षान्तरं दशानां वेति दशानां गवादीनां सजातीयानां एकमुद्धरेत्पितुरनिच्छयापि, सोऽयं विकल्पो ज्येष्ठगुणतारतम्याद्व्यवस्थितः। आपस्तम्बः। एकधनेन ज्येष्ठं तोषयित्वा जीवन् पुत्रेभ्यो विभजेत्समं, क्लीवमुन्मत्तं पतितं परिहाप्य। जीवञ्जीवन्नेव यः प्रजोत्पत्तावसमर्थ इत्यर्थः। एकधनेन उत्कृष्टाश्वादिना, क्लीव-

मित्यादिना विभागानधिकारिणः सर्व्वएवाभिमताः। ज्येष्ठविनाश्यल्पभूदरहादिस्या गुणाधिक्ये सति मन्तव्यमिति व्यवस्था। अत मनुः। भ्रातॄणामविभक्तानां यद्युत्थानं भवेदिह। न तत्र विषमं भागं पिता दद्यात् कथञ्चन। उत्थानं धनार्जनानुकूलव्यापारः। नारद-बृहस्पति याज्ञवल्क्याः। समन्यूनाधिका भागाः पित्रा येषां प्रकल्पिताः। तथैव ते पालनीया विनेयाः स्युरतोऽन्यथा। नारदः। पित्रैव तु विभक्ता ये समन्यूनाधिकैर्धनैः। तेषां स एव भागः स्यात् सर्वस्यैव पिता प्रभुः। पूर्व्वं सम्भूयोत्थाने भ्रातॄणां मिलित्वा धनार्जने विषमभागनिषेधनम्, इदन्तु पितुरर्जिते विषमविभागविधानम्, इत्यविरोधः। इति विवादरत्नाकरे जीवत्पितृकविभागतरङ्गः।

CHAPTER IV.

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विष्णुः। मातरः पुत्रभागानुसारभागहारिण्यः अनूढाश्च दुहितरः। मातर इति बहुवचननिर्द्देशात् प्रत्येकमेव जननीत्वात् एकत्वविवक्षायाश्च मानाभावात् बहूनां जननीनामधिकारः, अन्यथा मातरः पुत्रभागानुसारभागहारिण्य इति वर्णक्रमभागह्रासपरम्। एकभ्रातृपरत्वे सर्व्वं भुज्यते इति यद्देश्वरोऽपि। याज्ञवल्क्यः। पितुरूर्द्ध्वं विभजतां माताप्यंशं समं हरेत्। पितेत्यनुवृत्तौ बृहस्पतिः। तदभावे तु जननी तनयानां समांशिनी। समांशा मातरस्तेषां तुरीयांशा च कन्यका। जनन्यत्र पुत्रवती, मातरः पितृपत्न्योऽपुत्राः, तुरीयांशा सजातीयस्य भ्रातुर्यावान् अंशः तदपेक्षया चतुर्थोऽंशः संस्कारार्थं कल्पनीयः। यत्तु विष्णुवचनं मातरः पुत्रभागानुसारभागहारिण्यः अनूढाश्च दुहितर इति, तदपि एतद्वचनात् चतुर्थांशपरं, बृहस्पतेरपि अनूढाकन्यातात्पर्य्यकत्वात्। व्यासः। असुतास्तु पितुः पत्न्यः समानांशाः प्रकीर्त्तिताः। पितामह्यश्च ताः सर्व्वा मातृतुल्याः प्रकीर्त्तिताः। तु शब्दोऽप्यर्थे। * * * * *

CHAPTER V.

अथ विभागानधिकारिणः। तत्रापस्तम्बः। सर्वे धर्मयुक्ता भागिनः, यस्त्वधर्मेण द्रव्याणि प्रतिपादयति, ज्येष्ठोऽपि तम् अभागं कुर्य्यात्। प्रतिपादयति व्ययते इत्यर्थः। अधर्मेण द्यूतादिना, एतच्चाश्रमविरोधिव्ययाभिप्रायम्। अभागं व्ययितांशभागहीनं, भागहीनमिति केचित्। गौतमः। सवर्णापुत्रोऽप्यन्यायवृत्तो लभेतैकेषाम्। अपि शब्दात् किमुत विजातीयपुत्रा इत्याचार्य्याः। न लभेतांशमिति शेषः। शक्यापनयान्यायप्रवृत्तत्वापेक्षया विकल्प इत्यत्र रत्नाकरः। अत्र मनुः। सर्व एव विकर्म्मस्था नार्हन्ति भ्रातरो धनम्। विकर्म्मस्था द्यूताद्यासक्ताः। कुटुम्बार्थहानिपरा इत्यन्ये। अत्र शङ्खलिखितौ। अपपात्रितस्य ऋक्थपिण्डोदकानि निवर्त्तन्ते। अपपात्रितस्य नृपहिंसादिदोषात् बान्धवैः कृतघटापवर्ज्जनस्य। वृहस्पतिः। सवर्णजोऽप्यगुणवान् नार्हः स्यात् पैतृके धने। तत्पिण्डदाः श्रोत्रिया ये तेषां तदभिधीयते। उत्तमर्णाधमर्णेभ्यः पितरं त्रायते सुतः। अतस्तद्विपरीतेन नास्ति तेन प्रयोजनम्। तथा गवा किं क्रियते या न धेनुर्न गर्भिणी। कोऽर्थस्तेन तु पुत्रेण यो न विद्वान् न धार्म्मिकः। शास्त्रशौर्य्यार्थरहितस्तपोज्ञानविवर्ज्जितः। आचारहीनः पुत्रस्तु मूत्रोच्चारसमस्तु सः। अगुणवान् अग्रिमवाक्यखण्डे व्यक्तः। तत्पिण्डदाः अगुणवद्ग्रासाच्छादनदातारः। अथ मनुः। अनंशौ क्लीवपतितौ जात्यन्धबधिरौ तथा। उन्मत्तजडमूकाश्च ये च केचिन्निरिन्द्रियाः। सर्व्वेषामपि तु न्याय्यं दातुं शक्त्या मनीषिणा। ग्रासाच्छादनमत्यन्तं पतिताः स्युरदित्सवः। यद्यर्थिता तु दारैः स्यात् क्लीवादीनां कथञ्चन। तेषामुत्पन्नतन्तूनामपत्यं दायमर्हति। जात्यन्धेत्यत्र जातिग्रहणेनान्धत्वस्याप्रतिसमाधेयतामाह नौत्पत्तिकत्वम्। जडः आत्मपरविवेकशून्यः। निरिन्द्रिय ग्रहणेन पङ्ग्वादयः श्रौतस्मार्त्तक्रियानधिकारिणो गृह्यन्ते। सर्वेषामपि क्लीवादीनाम्, अत्यन्तं यावज्जीवं, क्लीवादीनाम् इति अतद्गुणसंविज्ञानो बहुव्रीहिः. क्लीवस्य अपत्योत्पादनायोग्यत्वात्। प्रकाशकारस्तु क्लीवत्वमथेऽपनेयदोषप्रयुक्तमपत्योत्पादनाशक्तत्वं विवक्षितम्, अतो न अतद्गुणसंविज्ञानं मन्यते। तन्तुरपत्यम्। याज्ञवल्क्यः। पतितस्तत्सुतः क्लीवः पङ्गुरुन्मत्तको जडः। अन्धोऽचिकित्स्यरोगाद्या भर्त्तव्यास्तु निरंशकाः। तत्सुतः पातित्यादनन्तरोत्पन्नः, जडो विकलान्तःकरणः, अचिकित्स्यरोगोऽप्रतिक्रियकुष्ठादिः, आदिशब्देनान्ये ऋष्यन्तरोक्ता अनंशा भरणीया ग्राह्याः। क्लीवादीनामनंशताप्राप्तौ तत्पुत्राणामपि निरंशत्वप्रसक्तौ अयमेवाह। औरसाः क्षेत्रजास्तेषां निर्द्दोषा भागहारिणः

सुतास्तेषां प्रभर्त्तव्या यावन्न भर्त्तृसात्कृताः। क्लीबादिपरिणीतपत्नीः प्रत्याह। अपुत्रा योषितश्चैषां भर्त्तव्याः साधुवृत्तयः। निर्वास्या व्यभिचारिण्यः प्रतिकूलास्तथैव च। प्रतिकूला इत्यत्र प्रातिकूल्यं विषप्रयोगादिकारित्वं विवक्षितं, न तु कलहमात्रकारित्वम्। नारदः। पितृद्विट् पतितः षण्ढो यश्च स्यादपपात्रितः। औरसा अपि नैतेऽंशं लभेरन् चेत्रजाः कुतः। दीर्घतीव्रामयग्रस्ता जडोन्मत्तान्धपङ्गवः। भर्त्तव्याः स्युः कुलस्यैते तत्पुत्रास्त्वंशभागिनः। पितरं यो द्वेष्टि स पितृद्विट्, द्वेषश्च पितरि जीवति मारणादिफलः, मृते तु तदुद्देशेनोदकाद्यदानरूपः। अपपात्रितः राजवधादिदोषेण कृतघटापवर्जनः, प्रकाशकृता तु औपपातकीति पठित्वा उपपातकेयुक्त इति विवरणम्। दीर्घं राजयक्ष्मादि, तीव्रं कुष्ठादि, भर्त्तव्याः पोषणीयाः। कुलस्य भ्रात्रादेः। देवलः। मृते पितरि न क्लीबकुष्ठ्युन्मत्तजडान्धकाः। पतितः पतितापत्यं लिङ्गी दायांशभागिनः। तेषां पतितवर्ज्जेभ्यो भक्तवस्त्रं प्रदीयते। तत्पुत्राः पितृदायांशं लभेरन् दोषवर्ज्जिताः। मृते मृतेऽपीत्यर्थः। लिङ्गी अतिशयेन कपटव्रतचारी। अत्र विष्णुः। पतितक्लीबाचिकित्स्यरोगविकलास्त्वभागहारिणः, ऋक्थग्राहिणस्तु भर्त्तव्याः, तेषां चौरसा, न तु पतितस्य। पतनीये कर्म्मणि कृते अनन्तरोत्पन्नाः प्रतिलोमासु स्त्रीषु उत्पन्नाश्चाभागिनस्तत्पुत्राः पैतामहेऽप्यर्थे, ऋक्थग्राहिणोऽंशग्राहकस्य। बौधायनः। अतीतव्यवहारान् ग्रासाच्छादनैर्बिभृयुः। अन्धजडक्लीबव्यसनिव्याधितांश्चाकर्म्मिणः पतिततज्जातवर्ज्जम्। अतीतव्यवहारान् अप्राप्तव्यवहारान्, अकर्म्मिणो धर्म्मयागादिषु नाधिकारिणः। तथा चाह। यज्ञार्थं द्रव्यमुत्पन्नं तत्रास्य विनियोजयेत्। स्थानेषु धर्म्मयुक्तेषु न स्त्रीमूर्खविधर्म्मिषु। पतिततदपत्यैः सह सर्व्वव्यवहारनिषेधात् न भरणमपि। वशिष्ठः। अनंशाश्चाश्रमान्तरगताः। आश्रमान्तरं गृहस्थाश्रमात्। गौतमः। जडक्लीबौ तु भर्त्तव्यौ, अपत्यं जडस्य भागार्हं, शूद्रापुत्रवत् प्रतिलोमासु। अर्हपदात् यदासावधिकारी भवति, तदा भागी, न तु जडापत्यत्वमात्रेणेति द्योत्यते। शूद्रापुत्रवदिति प्रतिलोमासु स्त्रीषु जातानामपि शुश्रूषमाणानां शूद्रापुत्रवज्जीवनं देयमित्यर्थः। कात्यायनः। अक्रमोढ़सुतश्चैवं सगोत्रात् यश्च जायते। प्रव्रज्यावसितश्चैव न ऋक्थं तेषु चार्हति। अक्रमोढ़ासुतस्त्वृक्थी सवर्णश्च यदा पितुः। असवर्णप्रसूतश्च क्रमोढ़ायाश्च यो भवेत्। प्रतिलोमप्रसूता या तस्याः पुत्रो न ऋक्थभाक्। ग्रासाच्छादनमत्यन्तं देयं तद्बन्धुभिर्मतम्। बन्धूनामप्यभावे तु पित्र्यं द्रव्यं तदाप्नुयात्। अपित्र्यं तद्धनं प्राप्तं दापनीया न बान्धवाः। अक्रमोढ़ासुतोऽत्र नानावर्णानां कन्यानां विवाहे यः क्रमः शास्त्रीयः, तदुल्लङ्घनेन

विवाहितायाम् असवर्णायाम् उत्पन्नः, अग्रे अनेनैवाक्रमोढासुते सवर्णाजाते प्रक्रमोढासुतस्तु रिक्थीत्यनेन भागग्राहकत्वविधिः। सगोत्रात् यस्तु जायते सगोत्रायां परिणीतायां यो जायते, प्रव्रज्यावसितः प्रव्रज्यां गृहीत्वा तत्र भ्रष्टः, अक्रमोढासुतस्त्विति अक्रमोढासुतोऽपि सवर्ण एव स्यात् तदा ऋक्थी भागग्राहक एव, एवमसवर्णप्रसूतोऽपि क्रमोढायां जातो भागग्राहक एव। प्रतिलोमप्रसूता या इति अपकृष्टवर्णेनोत्कृष्टवर्णा या परिणीता तत्पुत्रो न ऋक्थभाक्, ग्रासाच्छादनमिति तस्यैव यदि बान्धवाः सन्ति तदा तैः ग्रासाच्छादनमत्यर्थं देयं, बन्धूनाम् अभावे तु स्वयमेव तद्धनं गृह्णीयात्। यदा तु बान्धवैरपि अपिन्नमेव धनं प्राप्तं, तदा ग्रासाच्छादनमपि न ते तस्य दापयितव्या इति। वृहस्पतिः। असंस्कृता भ्रातरस्तु ये स्युस्तत्र यवीयसः। संस्कार्य्याः पूर्व्वजैस्ते वै पैतृकान्मध्यगाद्धनात्। यवीयसोयवीयांसः आर्षत्वान्नम् दीर्घयोरभावादित्येके। अन्ये तु यवीयसः कनिष्ठस्य मध्यगादित्याहुः। फलतश्च न कश्चित् विशेषः। व्यासः। असंस्कृतास्तु ये तत्र पैतृकादेव तद्धनात्। संस्कार्य्या भ्रातृभिर्ज्येष्ठैः कन्यकाश्च यथाविधि। कन्यकासंस्कारः परिणयरूपः। नारदः। येषान्तु न कृताः पूर्व्वैः संस्कारविधयः क्रमात्। कर्त्तव्या भ्रातृभिस्तेषां पैतृकादेव तद्धनात्। अविद्यमाने पित्र्यर्थे स्वांशात् उद्धृत्य वा पुनः। अवश्यकार्य्याः संस्कारा भ्रातृणां पूर्व्वसंस्कृतैः। अत्र संस्कारविधयो जातकर्म्माद्युपनयान्ताः। देवलः। कन्याभ्यश्च पितृद्रव्यं देयं वैवाहिकं वसु। अपुत्रस्य च कन्या स्वं धर्म्मजा पुत्रवद्धरेत्। याज्ञवल्क्यः। असंस्कृतास्तु संस्कार्य्या भ्रातृभिः पूर्व्वसंस्कृतैः। भगिन्यश्च निजादंशाद्दत्त्वांशन्तु तुरीयकम्। विष्णुः। अनूढानाञ्च कन्यानां वित्तानुरूपेण संस्कारं कुर्य्यात्। मनुः। स्वेभ्यः स्वेभ्यस्तु कन्याभ्यः प्रदद्युर्भ्रातरः पृथक्। स्वात् स्वात् अंशात् चतुर्भागं पतिताः स्युरदित्सवः। अत्र निजादंशादुद्धृत्य चतुर्थो भागो दातव्य इति नार्थं, किन्तु यज्जातीयपुत्रस्य यो भागः, तच्चतुर्थोऽंशो यो भवति, तं परिकल्प्य कन्यायै संस्कारार्थं दद्यादित्यर्थो विवक्षितः। तेन ब्राह्मणीपुत्राणां चतुर्षु अंशेषु, क्षत्रियाणां त्रिषु, समुदायात्, चतुर्थमंशं दद्युरित्यर्थो भवति। अत्र चानेकवाक्यागतचतुर्थांशदर्शनात् चतुर्थांशस्यैव दानं, प्रयोजनन्तु संस्कारः। चतुर्थांशदानविधिविष्णोरपि तथैव दिशा नेतव्यः। कल्पतरुप्रकाशमिताक्षरा अप्येवम्। विष्णुवाक्यदर्शनात् चतुर्थांशदानम् उपलक्षणम्, यावता संस्कारो भवति, तावत्येव तात्पर्य्यमिति हलायुधादिमतम्। युक्तञ्चैतत् कर्त्तव्यसंस्कारस्यौचित्यात्। कात्यायनः। कन्यकानान्त्वदत्तानां चतुर्थो भाग इष्यते। पुत्राणाञ्च त्रयो भागाः साम्यं स्वल्पधने स्मृतम्। साम्यं स्वल्पधने स्मृतमिति यदा चतुर्थभागरूपे धनेऽल्पता, संस्कारस्य-

धिकधननिर्व्वाह्य:, तदा यावता धनेन संस्कारो भवति, तावति धने कन्यकानां स्वाम्यं प्रभुत्वम्। तेन तावद्धनमेव स्वांशादाकृष्यापि भ्राता संस्कारार्थं दद्यमिति। मातुश्च वैवाहिकं स्त्रीधनं जीवन्त्यामपि मातरि। शङ्खलिखितौ। विभज्यमाने दायेभ्य: स्वकन्यालङ्कारं वैवाहिकं स्त्रीधनञ्च कन्या लभते। स्वकन्यालङ्कारं स्वकीयनूपुरादि कन्या लभते। बौधायन:। मातुरलङ्कारं दुहितर: साम्प्रदायिकं लभेरन् अन्यद्वा। मातुरलङ्कारं वैवाहिकं कन्या लभते, यदि चालङ्कारादन्यदपि वैवाहिकं मातुर्भवति तदा तदपि कन्या लभते इत्यर्थ:। अर्हति स्त्रीत्यनुवृत्तौ पुनर्बौधायन:। न दायं निरिन्द्रिया अदाया हि स्त्रियो मता इति श्रुति:। निरिन्द्रिया नि:सत्त्वा इति प्रकाश:, अदाया अनंशा इत्यर्थ:। एतच्च विहितांशस्त्री-व्यतिरिक्तविषयम्। इति विवादरत्नाकरे विभागानधिकारितरङ्ग:।

CHAPTER VIII.

अथ स्त्रीधनकृत्यम्। तत्र मनु:। न निर्हारं स्त्रिय: कुर्य्यु: कुटुम्बाद्बहुमध्यगात्। स्वकादपि च वित्ताद्धि स्वस्य भर्त्तुरनाज्ञया। कुटुम्बशब्देनात्र कुटुम्बधनं साह-चर्य्यादभिमतम्। तेन बहुमध्यगात् धनात् स्त्रीभिर्धनिनाम् अननुमत्या निर्हारो धनस्य निष्कृष्य हरणं धनस्वामिनाम् अननुमत्या न कार्य्यमित्यर्थ:। मनुविष्णू। पत्यौ जीवति य: स्त्रीभिरलङ्कारो धृतो भवेत्। न तं भजेरन् दायादा भजमाना: पतन्ति ते। पत्युरनुज्ञातेनाप्यदत्तोऽप्यलङ्कारो यो मण्डनार्थं धृत:, सोऽपि दायादैर्न हर्त्तव्य इति मेधातिथिरिति प्रकाश:। अत्रापस्तम्ब:। अलङ्कारोभार्य्याया ज्ञातिधनञ्चेत्येके। ज्ञातिधनञ्चेति विवाहे यद्धनं यौतकाख्यं लब्धं तदपि भार्य्याया-एवेत्यर्थ:। नारद:। भर्त्रा प्रीतेन यद्दत्तं स्त्रियै तस्मिन् मृतेऽपि तत्। सा यथाकामम् अश्नीयात् दद्याद्वा स्थावरादृते। यावत् भर्त्रा दत्तं धनं स्त्रीभ्यस्तन्मात्र-विषयं तावत् दर्शयति व्यास:। द्विसहस्रपणो दाय: स्त्रियै देयो धनस्य तु। यच्च भर्त्रा धनं दत्तं सा यथाकामम् आप्नुयात्। द्वे सहस्रे पणानां परिमाणम् अस्येति द्विसहस्रपण इति वचनात्, अल्पे धने अल्पदानमेवेति—स्वेच्छादेयं स्वयं-प्राप्तमिति वचनात्, साधारणधनाभिप्रायमेतदिति वदन्ति। प्रकाशस्तु या अयोग्य-भर्त्तृका भर्त्तृत्वेन स्मृता: पृथक्क्रियन्ते, ताभ्य: पणसहस्रद्वयाधिकम देयमिति

कात्यायनः। ऊढया कन्यया वापि पत्युः पितृगृहेऽथवा। भ्रातुः सकाशात् पित्रोर्वा लब्धं सौदायिकं स्मृतम्। सौदायिकं धनं प्राप्य स्त्रीणां स्वातन्त्र्यम् इष्यते। यस्मात् तदानृशंस्यार्थं तैर्दत्तं तत्प्रजीवनम्। सौदायिके सदा स्त्रीणां स्वातन्त्र्यं परिकीर्त्तितम्। विक्रये चैव दाने च यथेष्टं स्थावरेष्वपि। पत्युर्गृहे इति सम्बन्धः। भ्रातुः सकाशात् पित्रोर्वेत्युपलक्षणम्। तेन ऊढया अनूढया वा, पतिगृहे पितृगृहे वा, स्वमातुः स्वपितुर्वा, तत्कुल्येभ्यो वा, यल्लब्धं तत् सौदायिकम्। आनृशंस्यम् अदारुणता. तेन यस्मादियं वित्ताभावात् दारुणा न भवतु, एतदर्थं तैः पित्रादिभिर्दत्तं तत् प्रजीवनमिति लभ्यते। तदेवं सौदायिके धने स्थावरसाधारणं स्त्रीणां स्वातन्त्र्यं, भर्त्तृदत्ते तु स्थावरादन्यस्मिन् स्थितम्। यथा। भर्त्तृदायं मृते पत्यौ विन्यसेत् स्त्री यथेष्टतः। विद्यमाने तु संरक्षेत् क्षपयेत् तत्कुलेऽन्यथा। अपुत्रा शयनं भर्त्तुः पालयन्ती गुरौ स्थिता। भुञ्जीतामरणात् क्षान्ता, दायादा ऊर्द्ध्वम् आप्नुयुः। अत्र भर्त्तृदायो भर्त्तृसम्बन्धेन स्त्रीस्वत्वाश्रयः, धनं तच्च द्विधा,—मृते भर्त्तरि अधिकार्य्यन्तराभावात् स्त्रीस्वत्वाश्रयः, जीवत्येव भर्त्तरि तत्सम्बन्धेन वा स्त्रीस्वत्वाश्रयः। तत्र प्रथमे, स्त्री स्थावरात् अन्यत् यथेष्टं विन्यसेत् विनियुञ्जीत, गुरुसमीपे स्थिता भर्त्तुः शय्यां पालयन्ती समयं क्षपयेत्। स्थावरम् अधिकृत्याह, भुञ्जीतामरणात्, अग्रे दायादा आप्नुयुः। द्वितीयेत्वाह, विद्यमाने तु संरक्षेत्, व्यये भर्त्तुरनुज्ञां पालयन्ती तद्रक्षणं कुर्य्यात्, इति प्रकाशानुसारः। हलायुध-पारिजातौ तु भर्त्तृदायं, भर्त्तृदत्तस्त्रीधनम्, आहतुः। तदत्रापुत्रसंक्रान्ते स्त्री-स्वत्वाश्रयेऽपि धने आकाङ्क्षायाः सत्त्वात्प्रकाशस्वरसो बलीयान्, प्रकरणानुरोधश्च, आकाङ्क्षाया बलवत्त्वात्, निर्द्धारनिषेधवत्, त्यज्यतेऽपीति। मनुः। वशापुत्रासु चैवं स्याद्रक्षणं निष्कुलासु च। पतिव्रतासु च स्त्रीषु विधवास्वातुरासु च। जीवन्तीनान्तु तासां ये तद्धरेयुः स्वबान्धवाः। ताञ्छिष्याच्चौरदण्डेन धार्म्मिकः पृथिवीपतिः। वशा वन्ध्या, अपुत्राः प्रणष्टपुत्राः, निष्कुलाः प्रणष्टमातृपितृकुलाः। देवलः। वृत्तिराभरणं शुल्कं लाभश्च स्त्रीधनं भवेत्। भोक्त्री च स्वयमेवेदं पतिर्नार्हत्यनापदि। वृथा मोक्षे च भोगे च स्त्रियै दद्यात् सवृद्धिकम्। पुत्रार्त्ति-हरणे वापि स्त्रीधनं भोक्तुमर्हति। वृत्तिर्वृत्त्यर्थं दत्तधनं, लाभो बन्धुभ्यो लब्धं, शुल्कं विवाहार्थितया कन्यायै दत्तं धनम्। वृथा मोक्षे चेति, यदा आवश्यककार्य्यादिना धनमादाय वृथादानभोगौ करोति, तदा सवृद्धिकं धनं दद्यात्। पुत्रार्त्तिहरणार्थन्तु, स्त्रीधनं, विनापि स्त्रीसम्मत्या, ग्रहीतव्यम्। कात्यायनः। न भर्त्ता नैव च सुतो न पिता भ्रातरो न च। आदाने वा विसर्गे वा स्त्रीधने प्रभविष्णवः। यदि

स्त्रेणान्तरस्तेषां स्त्रीधनं हरते बलात्। स वृद्धिं प्रतिदाप्यः स्यात् दण्डञ्चैव समाप्नुयात्। तदेव यद्यनुज्ञाप्य: भक्षयेत् प्रीतिपूर्व्वकम्। मूलमेव स दाप्यः स्याद्‌यदा स धनवान् भवेत्। व्याधितं व्यसनस्थञ्च धनिकैर्व्वोपपीडितम्। दृष्ट्वा निसृष्टं यत् प्रीत्या दद्यादात्मेच्छया हि सः। व्याध्यादिना गृहीतं स्वाम्यादिकं दृष्ट्वा स्त्रिया यत् प्रीत्या धनं स्वामिप्रभृतये दत्तम्, तत् स्वेच्छया स्वामिप्रभृतिभिर्देयमित्यनन्तरवाक्यार्थः। याज्ञवल्क्यः। दुर्भिक्षे धर्म्मकार्य्ये च व्याधौ सम्प्रतिरोधके। गृहीतं स्त्रीधनं भर्त्ता न स्त्रियै दातुमर्हति। धर्म्मकार्य्ये अवश्यकर्त्तव्ये। व्याधाविति, यस्मिन् व्याधौ कार्य्यप्रतिरोधो भवति, तन्निर्हारार्थं स्त्रीधनं गृहीतं न स्त्रीयै दातव्यमित्यर्थः। कात्यायनः। अथ चेत् स द्विभार्य्यः स्यात् न च तां भजते पुनः। प्रीत्या निसृष्टमपि चेत् प्रतिदाप्यः स तद्धनम्। ग्रासाच्छादनवासानामाच्छेदो यत्र योषितः। तत्र स्वमाददीत स्त्री विभागमृक्थिनस्तथा। लिखितस्येति धर्म्मोऽयं प्राप्ते भर्त्तृकुले वसेत्। व्याधिता प्रेतकाले तु गच्छेद्‌बन्धुकुलं ततः। अपकारक्रियायुक्ता निर्लज्जार्थविनाशिका। व्यभिचाररता स्त्री तु स्त्रीधनं न च सार्हति। यन्नार्थं द्रव्यमुत्पन्नं तस्माद्‌द्रव्यं नियोजयेत्। स्थानेषु धर्म्मयुक्तेषु न स्त्रीमूर्खविधर्म्मिषु। भर्त्रा प्रतिश्रुतं देयम् ऋणवत् स्त्रीधनं सुतैः। तिष्ठेद्‌भर्त्तृकुले जातु न या पितृकुले वसेत्। यदा प्रीत्या यया भार्य्यया धनं दत्तं, तां पतिर्न भजते ऋतुकालादावपि, तथा ग्रासाच्छादनवासानामाच्छेदो वा भवति, तदा व्याध्याद्युपहतं पतिमालोक्य स्वधनं दत्तमपि तया बलाद्‌ग्राह्यं, तच्चाश्रमे तस्या लभ्यं भवति, यदापि पत्यादिसकाशाद्‌ग्राह्यम् इत्ययं शास्त्रधर्म्मः। प्राप्ते च तत्र धने सा भर्त्तुः कुले एव वसेत्। बलवति व्याधौ तद्‌बन्धुकुलं गच्छेदिति, बन्धुकुलं तत इत्यन्तस्यार्थः। इति विवादरत्नाकरे स्त्रीधनकृत्यतरङ्गः।

CHAPTER IX.

अथ स्त्रीधनविभागनिर्णयः। तत्र मनुः। जनन्यां संस्थितायान्तु समं सर्व्वे सहोदराः। भजेरन् मातृकं रिक्थं भगिन्यश्च सनाभयः। समं ज्येष्ठोद्धारादिशून्यम्, भगिन्योऽत्र अप्रत्ता अप्रतिष्ठिताश्च विवक्षिताः, अग्निमद्वृहस्पतिवाक्यानुसारात् सनाभयः सहोदराः। यथा। यास्तासां स्युर्दुहितरस्तासामपि यथांशतः। मातामह्या धनात् किञ्चित् प्रदेयं प्रीतिपूर्व्वकम्। तासां भगिनीनां यथांशतो धनबहुत्वाल्प-

त्वानुसारेण। तथा। अन्वाधेयञ्च यद्दत्तं पत्या प्रीतेन चैव यत्। पत्यौ जीवति वृत्तायाः प्रजायास्तद्धनं भवेत्। अन्वाधेयलक्षणं वक्ष्यते। एतच्च वचनं, वृत्तायां जीवत्यपि पत्यौ एवंविधधनद्वये पतिसम्बन्धनिराकरणार्थम् आरब्धमिति हलायुधः। वृहस्पतिः। स्त्रीधनं स्यादपत्यानां दुहिता च तदंशिनी। अप्रत्ता चेत् समूढा तु लभते मानमात्रकम्। अपत्याना पुत्राणां तदंशिनी पुत्रांशसमांशिनी। अप्रत्ता अनूढा। तेनैतद्वाक्यबलान्मनुवाक्येऽपि अनूढामामेव भ्रातृभि. सह समांशित्वमिति बोद्धव्यम्। ऊढानान्तु मानानुसारेण किञ्चिद्देयम्। गौतमः। स्त्रीधनं दुहितॄणामप्रत्तानामप्रतिष्ठितानाञ्च। एतत् न पुत्रांशस्य व्यावृत्त्यर्थं किन्तु दुहितंशप्रतिपादनार्थम्। अप्रतिष्ठिता विवाहितानपत्या निर्धनभर्त्तृका दुर्भगा च। मनुः। मातुस्तु यौतकं यत् स्यात् कुमारीभाग एव सः। यौतकमत्र परिणयनकाले पित्रादिभिः स्त्रियै दत्तम्। हलायुधस्तु यौतकं शाकसूपार्थं स्त्रियै दत्तं तया स्वकौशलेन विशेषितम्, तत्र न भ्रातॄणामूढानाञ्च भागः, अनपत्यानां दुर्भगाणामूढानाञ्च सम एवांश इति। वशिष्ठः। मातुः पारिणाय्यं स्त्रियो विभजेरन्। पारिणाय्यं परिच्छद आदर्श कङ्कणादि। विभजेरन्नूढ इत्यनुवृत्तौ याज्ञवल्क्यः। मातुर्दुहितरः शेषमृणात्ताभ्य ऋतेऽन्वयः। ऋणात् मातृणात्, शेषमवशिष्टं, तेन मातृणं परिशोध्य यौतकं पारिणाय्यञ्च धनमवशिष्टम् अप्रत्ता अप्रतिष्ठिताश्च दुहितरो भजेरन् इति खण्डाश.। ताभ्यो दुहितृभ्य ऋते विना तदन्वयः दुहितृ पुत्रादिः। ब्राह्मादिविवाहविषयमेतत्। तथाच त्रिवाहेष्वित्यनुवृत्तौ विष्णुः। सर्व्वेष्वेव प्रसूतानां तद्धनं दुहितृगामि। मनुः। स्त्रियास्तु यद्भवेद्वित्तं पित्रा दत्तं कथञ्चन। ब्राह्मणी तद्धरेत् कन्या तदपत्यस्य वा भवेत्। यदा भर्त्ता स्वापत्यानि च न सन्ति, सपत्न्यश्च नानाजातीयाः तद्दुहितरश्च सन्ति, तदा ब्राह्मणी कन्या पितृदत्तं मातृसपत्नीधनमर्हति, तदभावे तदपत्यं वेत्यर्थः। पित्रा दत्तमिति स्त्रीधनमात्रोपलक्षणम् इत्यसहायमेधातिथिरिति प्रकाशकारः। कात्यायनः। दुहितॄणामभावे तु रिक्थं पुत्रेषु तद्भवेत्। बन्धुदत्तन्तु बन्धूनामभावे भर्त्तृगामि तत्। भगिन्यो बान्धवैः सार्द्धं विभजेयुः सभर्त्तृकाः। स्त्रीधनस्येति धर्म्मोऽयं विभागस्तु प्रकल्पतः। पारिणाय्यं यौतकं पितृदत्तञ्च धनं दुहितॄणामभावे पुत्रगामि तदतिरिक्तस्त्रीधने पूर्व्वोक्ताः। अभावे पूर्व्वोक्तानां भर्त्तृगाम्येव धनमिति। इति विवादरत्नाकरे स्त्रीधनविभागनिर्णयतरङ्गः।

CHAPTER X.

अथाप्रजाधने विवाहविशेषेण व्यवस्था। तत्र नारदः। स्त्रीधनं स्यादपत्यानां भर्तृगाम्यप्रजासु च। ब्राह्मादिषु चतुर्ष्वाहुः पितृगामीतरेषु च। चतुर्ष्विति न पञ्चमव्यवच्छेदार्थं, तेन ब्राह्मदैवार्षगान्धर्व्वप्राजापत्येषु अप्रजाया धनं तदपगमे भर्तृगामि, इतरेषु राक्षसासुरपैशाचेषु पितृगामि। विवाहकाललब्धस्त्रीधनविषयमिदम्। तथाच मनुः। ब्राह्मदैवार्षगान्धर्व्वप्राजापत्येषु यद्वसु। अतीतायामप्रजसि भर्त्तुरेव तदिष्यते। यत्त्वस्याः। स्याद्धनं दत्तं विवाहेष्वासुरादिषु। अतीतायामप्रजसि मातापित्रोस्तदिष्यते। अप्रजसि अनपत्यायाम्। देवलः। सामान्यं पुत्रकन्यानां मृतायां स्त्रीधनं स्त्रियाम्। अप्रजायां हरेद्भर्त्ता माता भ्राता पितापि वा। हरेद्भर्त्ता ब्राह्मादिषु, मात्रादयस्त्वासुरादिषु, एवञ्च मनुनारदयोरपि देवलोक्तमादायात्र तात्पर्य्यमिति मन्तव्यम्। अत्र गौतमः। भगिनीशुल्कं सोदर्य्याणामूर्द्धं मातुः पूर्व्वञ्चैके। यो भगिन्या भर्तृगृहादासुरादिविवाहेष्वर्थो लब्धः, स ऊर्द्धं मातुः, मातर्य्यतीतायां, सोदर्य्याणां पूर्व्वञ्चेति चशब्दोऽप्यर्थे, तेन मातुर्मरणात् पूर्व्वमपि भगिनीनामीदृशं सोदर्य्याणामित्येके। परमतमेतदित्यत्र हलायुधः। याज्ञवल्क्यः। बन्धुदत्तं तथा शुल्कमन्वाधेयकमेव च। अप्रजायामतीतायां बान्धवास्तदवाप्नुयुः। शुल्कं यद्गृहीत्वा कन्या दीयते तदिह विवक्षितम्। अन्वाधेयकं स्त्रीधनलक्षणम्। बान्धवाः सोदराः। इदमप्यासुरादिविवाहविषयम्। मनुः। अपुत्रायां मृतायान्तु पुत्रिकायां कथञ्चन। धनं तत्पुत्रिकाभर्त्ता हरेतैवाविचारयन्। एतच्च यदा अपुत्रायास्तस्याः कुमारी न भवति भगिनी वा, तदा बोद्धव्यम्। तथाच पैठीनसिः। प्रेतायां पुत्रिकायां न भर्त्ता तद्द्रव्यमर्हत्यपुत्रायां कुमार्य्या स्वसा वा तद्ग्राह्यम्। अत्र कुमार्य्या अभावे स्वसा ग्राह्यम्। याज्ञवल्क्यः। दत्त्वा कन्यां हरन् दण्ड्यो व्ययं दद्याच्च सोदयम्। मृतायां सर्व्वमादद्यात् परिशोध्योभयव्ययम्। कन्यां वाचा दत्त्वा विना दोषमपहरन् राज्ञा दण्ड्यः, व्ययश्च सवृद्धिकं वरस्य दापयितव्यः, कारणे त्वपहारो न दोषाय। यदाह। दत्तामपि हरेत् कन्यां श्रेयांश्चेद्वर आव्रजेत्। यदि तु दैवाद्वाग्दत्ता कन्या म्रियते, तदा यत् पूर्व्वसम्बन्धिनामुपचारार्थं पित्रा दत्तं, यच्च सम्बन्धिना अङ्गुरीयकादि दत्तं, तदुभयं परिशोध्य परिगणय्यावशिष्टमादद्यात्। अर्हतीत्यनुवृत्तौ शङ्खः। स्वयं शुल्कं वोढा। बौधायनः। ऋक्थं मृतायाः कन्याया गृह्णीयुः सोदराः स्वयम्। तदभावे भवेन्मातुस्तदभावे पितुर्भवेत्। अत्र कन्यानूढाभिप्रेता। बृहस्पतिः।

मातृष्वसा मातुलानी पितृव्यस्त्री पितुः स्वसा। श्वश्रूः पूर्व्वजपत्नी च मातृतुल्याः प्रकीर्त्तिताः। यदासामौरसो न स्यात् सुतो दौहित्र एव वा। तत्सुतो वा धनं तासां स्वस्रीयाद्याः समाप्नुयुः। औरसादीनामभावे मातृष्वस्रादीनां स्वधनं स्वस्रीयाद्या आप्नुयुरित्यर्थः। इति विवादरत्नाकरे अप्रजाधने विवाहविशेषेण व्यवस्थातरङ्गः।

CHAPTER XIII.

बृहस्पतिः। अनपत्यस्य शुश्रूषुर्गुणवान् शूद्रयोनिजः। लभेताजीवनं शेषं सपिण्डाः समवाप्नुयुः। अपरिणीतास्वित्यधिकारादनूढापुत्रविषयमेतत्। अत्र गौतमः। शूद्रापुत्रोऽप्यनपत्यस्य शुश्रूषुश्चेल्लभेत वृत्तिमूलमन्तेवासिविधिना। अनूढशूद्रापुत्रोऽपि वर्णत्रयस्य अविद्यमानान्यद्विजातिपुत्रस्य वृत्तिमूलं कृष्यादिरूपं जीवनमूल्यं किञ्चिल्लभेत, यदि शुश्रूषुरन्तेवासिवदाराधनकर्त्ता स्यादित्यर्थः। यत्तु तस्मै पितादत्तमपि देयमाहतुः शङ्खलिखितौ। न शूद्रापुत्रोऽर्थभागी, यदेवास्य पिता दद्यात् स एवास्य भागः तस्य गोमिथुनञ्चापरं दद्यात् कृष्णायसं कृष्णधान्यं तिलवर्ज्जम्। (तदनूढापुत्रविषयं)। गौतमः। शूद्रापुत्रवत् प्रतिलोमासु। इतरवर्णजाताः शूद्रापुत्रवदन्तेवासिविधिना मूल्यमात्रभाज इत्यर्थः। मनुः। दास्यां वा दासदास्यां वा यः शूद्रस्य सुतो भवेत्। सोऽनुज्ञातो हरेदंशमिति धर्म्मो व्यवस्थितः। दास्यां—ध्वजाहृतो भक्तदास इत्यादिलक्षणान्यतमलक्षणवत्यां, दासदास्यां—तथाविधलक्षणवद्दासदास्यां वाऽनूढायां दासजातोऽनुज्ञातोऽपि तथा भवतीति व्यवस्थितो धर्म्मः। परिचारकदास्यामिति कल्पतरुः। याज्ञवल्क्यः। जातोऽपि दास्यां शूद्रेण कामतोऽंशहरो भवेत्। मृते पितरि कुर्य्युस्तं भ्रातरस्त्वर्द्धभागिनम्। कामतः पितुरिच्छया भागं लभते। यदि पितुरूर्द्ध्वं परिणीतापुत्राः सन्ति, तदा स्वभागादिच्छयार्द्धभागग्राहकं दासीपुत्रं कुर्य्युरित्यर्थः। परिणीतापुत्राभावे आह। अभ्रातृको हरेत् सर्व्वं दुहितॄणां सुताद्दते। परिणीतासुताभावे परिणीतभार्य्यादुहितृदुहितृपुत्राभावे च दासीपुत्र एव पितुरूर्द्ध्वं सर्व्वं हरेत्। इति विवादरत्नाकरे नानावर्णानां विभागतरङ्गः।

CHAPTER XIV.

अथ विभक्तजविभागः। मनुः। ऊर्द्ध्वं विभागाज्जातस्तु पित्र्यमेव धनं हरेत्। संसृष्टास्तेन वा ये स्युर्विभजेत स तैः सह। पित्रा सह विभक्तेषु पुत्रेषु पश्चाज्जातो मृते पितरि पित्र्यं सर्व्वं हरेत्। जीवति पितरि पितृधनादंशमात्रम्। एवकारेण तु नापि विभक्तभ्रात्रंशमिति द्योतयति। बृहस्पतिः। पित्रा सह विभक्ता ये सापत्ना वा सहोदराः। जघन्यजाश्च ये तेषां पितृभागहरास्तु ते। अनीशः पूर्व्वजः पित्रोः भ्रातृभागे विभक्तजः। पूर्व्वजः विभागपूर्व्वजः विभक्त इति यावत्, असौ पितृभागे अनीशः, विभक्तजः विभक्तपितृजातः भ्रातृभागे अनीश इत्यर्थः। तथा। पुत्रैः सह विभक्तेन पित्रा यत् स्वयमर्ज्जितम्। विभक्तजस्य तत् सर्व्वमनीशाः पूर्व्वजाः स्मृताः। यथा धने तथर्णेऽपि दानाधानक्रयेषु च। परस्परमनीशास्ते मुक्ता शौचोदकक्रियाः। याज्ञवल्क्यः। विभक्तेषु सुतो जातः सवर्णायां विभागभाक्। दृश्याद्वा तद्विभागः स्याद् आयव्ययविशोधितात्। विष्णुः। पितृविभक्ता अनन्तरोत्पन्नस्य विभागं दद्युः। एतद्द्वयमपि विभागसमयगर्भस्थ-विभागानन्तरोत्पन्न-विषयम्। अनेन विभागसमयगर्भस्थस्य विभागानन्तरजस्य विभक्तैः सद्भिः स्वभागादाकृष्य तद्भागपूरणं कर्त्तव्यमित्युक्तं, तदन्यस्य विभागानन्तरजस्य विभक्तस्य पितुर्धनभागितेति मन्वादिमतं विभागसमयोत्पन्नस्यास्पष्टतामादाय, स्पष्टगर्भायान्तु विभाग एव नास्तीति प्रकाशकारः। हलायुधस्तु विष्णुवाक्यलिखनानन्तरं याज्ञवल्क्यं लिखित्वाह, अस्यार्थः सवर्णायामुत्पन्नो विभक्तजो यदि गुणवान्, तदा सर्व्वस्मात् दृश्यात् दृश्यरूपात् पूर्व्वविभक्तरूपात् भागं लभते, यदि तु मन्दगुणस्तदा दृश्यादेव परिदृश्यमानादेव भूम्यादेर्मूलरूपधनात् उत्पन्नधान्यादिरूपात् भ्रातृकृतमूल्यं पातयित्वा अवशिष्टभागं लभते इति। इति विवादरत्नाकरे विभक्तजविभागतरङ्गः।

CHAPTER XV.

अथ विभक्तागतविभागः। तत्र बृहस्पतिः। कृतेऽकृते विभागे वा रिक्थी यत्र प्रवर्त्तते। सामान्यञ्चेद् भावयति तत्र भागहरस्तु सः। भावयति विभावयति समाप्यत्वांश इति। तथा। ऋणं लेख्यं गृहं चेत्रं यस्य पैतामहं भवेत्। चिरकालप्रोषितोऽपि भागभागागतस्तु सः। गोत्रसाधारणं त्यक्त्वा योऽन्यदेशं समाश्रितः। तद्वंशस्यागतस्यांशः प्रदातव्यो न संशयः। तृतीयः पञ्चमश्चैव सप्तमो

वापि यो भवेत्। जन्मनामपरिज्ञाने लभेतांशं क्रमागतम्। यस्त्वाचतुर्थादविभक्तविभक्तानामित्यादि देवलोक्तनियमः, स सहवासादौ, अयन्तु दूरदुर्गमवासादावित्यविरोधः। तथा। यं परम्परया मौलाः सामन्ताः स्वामिनं विदुः। तदन्वयस्यागतस्य दातव्या गोत्रजैर्मही। इति विवादरत्नाकरे विभक्तागतविभागतरङ्ग।

CHAPTER XXIV.

अथ दत्तकः। तत्र विष्णुः। दत्तश्चाष्टमः, स च माता पिता वा यस्य दत्तः। तस्य स्यादिति शेषः। मनुः। माता पिता वा दद्यातां यमद्भिः पुत्रमापदि। सदृशं प्रीतिसंयुक्तो स ज्ञेयो दत्त्रिमः सुतः। उपपन्नो गुणैः सर्व्वैः पुत्रो यस्य तु दत्त्रिमः। स हरेत्रैव तद्रिक्थं संप्राप्तोऽप्यन्यगोत्रतः। गोत्ररिक्थे जनयितुर्न हरेद्दत्त्रिमः सुतः। गोत्ररिक्थानुगः पिण्डो व्यपैति ददतः स्वधा। आपदि प्रतिग्रहीतुः पुत्राभावे, सदृशं सवर्णम्। मेधातिथिस्तु न जातितः, किन्तु कुलानुरूपैर्गुणैरित्याह। प्रीतिसंयुक्तो भयाद्युपाधिरहितौ। गुणैर्जातिविद्याचारैः। पुत्रत्वादेव रिक्थहरत्वे प्राप्ते,—उपपन्नो गुणैरिति वचनं, पश्चाज्जाते चौरसे सगुणस्य दत्त्रिमस्यांशप्राप्त्यर्थं, निर्गुणस्य भरणमात्रप्राप्त्यर्थञ्च। गोत्रमार्षेयं काश्यपादिप्रसिद्धम्। उत्सर्गतो गोत्ररिक्थानुयायित्वात् पिण्डदानमपि निवर्त्तते। स्वधाशब्दः श्राद्धादिपरः। वशिष्ठः। शुक्रशोणितसम्भवः पुत्रो मातापितृनिमित्तकस्तस्य दानविक्रयत्यागेषु मातापितरौ प्रभवतः। न त्वेकं पुत्रं दद्यात् प्रतिगृह्णीयाद्वा, स हि सन्तानाय पूर्व्वेषाम्। न तु स्त्री दद्यात् प्रतिगृह्णीयाद्वा अन्यत्रानुज्ञानाद्भर्त्तुः। पुत्रं प्रतिग्रहीष्यन् बन्धूनाहूय राजनि चावेद्य निवेशनस्य मध्ये व्याहृतिभिर्हुत्वाऽदूरबान्धवमसन्निकृष्टमेव प्रतिगृह्णीयात्, सन्देहे चोत्पन्ने दूरबान्धवं शूद्रमिव स्थापयेत्। विज्ञायते ह्येकेन बहूंस्त्रायत इति। दानवद्विक्रयपरित्यागावपि न कार्य्यौ। विक्रय आपदि, भरणासामर्थ्ये त्यागः। सन्तानोच्छेदे हि पिण्डोदकक्रियानिवृत्तिर्महान्दोष इति प्रकाशः। पितुर्मातुश्च द्वयोरपि प्रत्येकमपि दानेऽधिकारः। द्वयोस्तु विशेषः, यत् सति पितरि, तदनुज्ञानान्मातुर्दातृत्वमसति तदभावेऽपि। बन्धूनाहूय दत्तकस्यांशप्राप्त्यर्थं स्वदायादान् सन्निधाप्य। अदूरबान्धवं सन्निहितात्मीयमातुलादिकम्, एत[illegible]त्यादिज्ञापनार्थं तस्य बान्धवस्याभावे तदसन्निकृष्टमपि प्रमाणान्तरेण दृढेन नामगोत्रज्ञापनात् प्रतिगृह्णीयात्। असन्निकृष्टमेव इत्येवकारो

ऽप्यर्थः। सन्देहे चोत्पन्ने इति अथ कथञ्चिदद्दूरस्थबान्धवं गृहीतवती ब्राह्मण्यादौ संशयः स्यात्, तदा शौद्रपुत्रमिव भरणमात्रोपयुक्तं कृत्वा स्थापयेत्। एकेन बहूंस्त्रायते, यतः कथञ्चिदेकेन पुत्रेण बहून् पूर्व्वजांस्त्रायते। तस्मादसन्दिग्ध-जात्यादिकमेव परिगृह्णीयादित्यर्थः। इति विवादरत्नाकरे दत्तकतरङ्गः।

CHAPTER XXVIII.

अथ कृत्रिमः। तत्र मनुः। सदृशं यं प्रकुर्य्यात्त गुणदोषविचक्षणम्। पुत्रं पुत्रगुणैर्युक्तं स विज्ञेयस्तु कृत्रिमः। तत्रापि सदृशः सदृशगुण इति मेधातिथिः। गुणदोषविचक्षणं मातापित्रोरौर्द्ध्वदेहिककरणे गुणोऽकरणे दोषस्तद्विचक्षणम्। पुत्रगुणैः शुश्रूषादिभिर्युक्तम्। बौधायनः। सदृशं सकामं यं कुर्य्यात् स कृत्रिमः। सकामं सह कामेन वर्त्तत इति, अस्याहं पुत्रो भविष्यामि यदि मामयं पुत्रत्वेन ग्रहीष्यतीति मन्यमानं सदृशं सवर्णम्। अत्र याज्ञवल्क्यः। कृत्रिमः स्यात् स्वयं कृतः। तथा। सजातीयेष्वयं प्रोक्तस्तनयेषु मया विधिः। सति सवर्णे इति शेषः। कानीनगूढोत्पन्नसहोढपौनर्भवाणां सवर्णत्वं जनकद्वारेण न स्वरूपतः तेषां सवर्णजत्वजातिलक्षणाभावादिति प्रकाशः। इति विवादरत्नाकरे कृत्रिमपुत्रतरङ्गः।

CHAPTER XXXI.

अथ पुत्रातिदेशः। तत्र मनुः। भ्रातृणामेकजातानामेकश्चेत्पुत्रवान् भवेत्। सर्व्वे ते तेन पुत्रेण पुत्रिणो मनुरब्रवीत्। सर्व्वासामेकपत्नीनामेका चेत् पुत्रिणी भवेत्। सर्व्वास्तास्तेन पुत्रेण प्राह पुत्रवतीर्मनुः। बृहस्पतिः। यद्येकजाता बहवो भ्रातरस्तु सहोदराः। एकस्यापि सुते जाते सर्व्वे ते पुत्रिणः स्मृताः। बह्वीनामेकपत्नीनामेष एव विधिः स्मृतः। एका चेत् पुत्रिणी तासां सर्व्वासां पिण्डदस्तु सः। सर्व्वे तेन पुत्रेण, अतासहायेनोक्तं पुंसां सति भ्रातृजे, स्त्रीणां सपत्नीपुत्रे, क्षेत्रजादयः प्रतिनिधयो न कर्त्तव्या इति। पारिजातोऽप्येवमाह। मनुटीकायामुदयकरोऽप्येवम्। इति विवादरत्नाकरे पुत्रातिदेशतरङ्गः।

CHAPTER XXXIV.

अथापुत्रधनविभागः। तत्र मनुः। संस्थितस्यानपत्यस्य सगोत्रात्पुत्रमाहरेत्। तत्र तद्रिक्थजातं स्यात्तत्तस्मै प्रतिपादयेत्। अनपत्यस्य मृतस्य पत्नी सगोत्राद्देवर-सपिण्डयोरन्यतरस्मात् अपत्यमुत्पाद्य तस्मै मृतस्वामिस्वत्वोपलक्षितरिक्थजातं दद्यान्न स्वयमाददीतेति पारिजातः। प्रकाशकारस्तु राजैव सगोत्रद्वारा तमाहूय तस्मै दद्याच्चेत्याह। फलतोऽत्र न कश्चिद्विशेषः। वृद्धमनुः। अपुत्रा शयनं भर्त्तुः पालयन्ती व्रते स्थिता। पत्न्येव दद्यात्तत्पिण्डं कृत्स्नमंशं लभेत च। अपुत्रा द्वादशविधपुत्रशून्या। व्रते विधवानियमे। बृहस्पतिः। आम्नाये स्मृतितन्त्रे च लोकाचारे च सूरिभिः। शरीरार्द्धं स्मृता जाया पुण्यापुण्यफले समा। यस्य नोपरता भार्य्या देहार्द्धं तस्य जीवति। जीवत्यर्द्धशरीरेऽर्थं कथमन्यः समाप्नुयात्। सकुल्यैर्विद्यमानैस्तु पितृमातृसनाभिभिः। असुतस्य प्रमीतस्य पत्नी तद्भागहारिणी। पूर्व्वं प्रमीताग्निहोत्रं मृते भर्त्तरि तद्धनम्। विन्देत् पतिव्रता नारी धर्म्म एष सनातनः। जङ्गमं स्थावरं हेम रूप्यं धान्यं रसाम्बरम्। आदाय दापयेच्छ्राद्धं मासषाण्मासिकादिकम्। पितृव्यगुरुदौहित्रान् भर्त्तुः स्वस्रीयमातुलान्। पूजयेत्-कव्यपूर्त्ताभ्यां वृद्धानाथातिथीन् स्त्रियः। केचित् स्त्रियाः पार्व्वणमप्याहुस्तन्निषेधाय श्राद्धानि परिगणयति मासषाण्मासिकादिकमिति, अत्र मासशब्देन द्वादशमासिका न्युच्यन्ते। षाण्मासिकशब्देन द्वे ऊनषाण्मासिके। आदिशब्देन एकादशसपिण्ड-नप्रत्यब्दकर्त्तव्यचयाहश्राद्धानि गृह्यन्ते। अतो नान्यत्कुर्य्यात्, अन्यथा वचनान्तरैरेव एतेषां श्राद्धानां सिद्धत्वाद्वचनमिदमनर्थकं स्यादिति। पतिव्रता साध्वी तथा दापयेदिति स्वार्थे णिच्, रामो राज्यमकारयदितिवत्। उदयकरस्तु मनुटीकायां पतिव्रताशब्दं मुख्यार्थं विवक्षन्ननुमरणान्तत्वात्पातिव्रत्यस्य दापयेदिति पारार्थ्यमेवाह। एवञ्च पतिव्रतात्वेतरगुणसम्पन्नानामप्यधिकारो न स्यादिति बहवो नाद्रियन्ते। एवमपुत्रधने विद्यमानायां साध्व्यां भार्य्यायां तस्या अधिकारः। तदभावे तु विद्यमानाया दुहितुरधिकारः इत्याह नारदः। पुत्राभावे तु दुहिता तुल्यसन्तान-दर्शनात्। पुत्रश्च दुहिता चोभे पितुः सन्तानकारिके। मनुः। यथैवात्मा तथा पुत्रः पुत्रेण दुहिता समा। तस्यामात्मनि जीवन्त्यां कथमन्यो हरेद्धनम्। अत्र बृहस्पतिः। अङ्गादङ्गात्सम्भवति पुत्रवद्दुहिता नृणाम्। तस्याः पितृधनन्त्वन्यः कथं गृह्णीत मानवः। सदृशी सदृशेनोढा साध्वी शुश्रूषणे रता। कृताकृता वा पुत्रस्य पितुर्धनहरी तु सा। अथ बृहस्पतिः। भार्य्यासुतविहीनस्य तनयस्य मृतस्य च। माता रिक्थहरी ज्ञेया भ्राता वा तदनुज्ञया। तदनुज्ञया मातुर-

नुज्ञया तत्र मनुः। अनपत्यस्य पुत्रस्य माता दायाद्यमाप्नुयात्। मातर्य्यपि च वृत्तायां पितुर्माता हरेद्धनम्। अनपत्यत्वमत्र पुत्रपौत्रादिशून्यत्वं विवक्षितम्। पितामह्यधिकारः पितृभ्रात्राद्यभावे द्रष्टव्यः। मातुरभावे पित्रादीनामधिकारस्य स्थितत्वात्। दायाद्यं दायादग्राह्यमृक्थम्। गौतमः। संसृष्टविभागः प्रेतानां ज्येष्ठस्य। असंसृष्टानां विभक्तानां भ्रातृणां मध्ये योऽनपत्यः प्रेतिः, तस्य भागो ज्येष्ठस्यैव भवतीत्यर्थः। एतदपि पत्नीमातापित्रसत्त्वे बोद्धव्यम्। मनुः। पिता हरेदपुत्रस्य ऋक्थं भ्रातर एव वा। त्रयाणामुदकं कार्य्यं त्रिषु पिण्डः प्रवर्त्तते। चतुर्थः सम्प्रदातैषां पञ्चमो नोपपद्यते। अनन्तरः सपिण्डाद्यस्तस्य तस्य धनं भवेत्। अत ऊर्द्ध्वं सकुल्यः स्यादाचार्य्यः शिष्य एव वा। अपुत्रस्य मुख्यामुख्यपुत्रशून्यस्य. अनन्तरः सन्निहितः, धनमपुत्रस्य, सकुल्योऽत्र समानोदकः। पैठीनसिः। अपुत्रस्य भ्रातृगामि द्रव्यं तदभावे मातापितरौ लभेताम्। पत्नी वा ज्येष्ठा सगोत्र-शिष्यसब्रह्मचारिणः। अज्येष्ठा पतिव्रतात्वान्यस्वल्पविधवाकर्त्तव्यनियमवती, न तु सर्व्वतत्कर्त्तव्यवती. तस्या भात्रपेक्षया पतिऋक्थग्रहणे मुख्यत्वात्। नापि व्यभिचारिणी, तस्या निर्वास्यत्वात्। सब्रह्मचार्य्यत्र सहाध्यायी। यच्च भरणञ्चास्य कुर्व्वीरन् स्त्रीणामाजीवितक्षयात्। रक्षन्ति शय्यां भर्त्तुश्चेदाच्छिन्द्युरितरासु च। इति भरणमात्रं शङ्खेनोक्तं तद्वैधव्यव्रतादिरहिताव्यभिचारिणीमात्रविषयम्। यत्तु याज्ञवल्क्येन, पितरौ भ्रातरस्तथेति भ्रातृसद्भावे पित्रोरेवाधिकार उक्तः, स पितृ-पितामहाद्यर्ज्जितधनविषयः। यच्च पितृद्रव्याविरोधेनार्ज्जितं, तत्पित्रोः सद्भावे भ्रातृणामेव। देवलः। ततो दायमपुत्रस्य विभजेरन् सहोदराः। तुल्या दुहितरो वापि ध्रियमाणः पितापि वा। सवर्णा भ्रातरो माता भार्य्या चेति यथाक्रमम्। एषामभावे गृह्णीयुः कुल्यानां सहवासिनः। तुल्याः सवर्णाः। पिता ध्रियमाणः सस्पृहश्चेति शेषः। अत्र हलायुधेन यथाक्रमं यथायाज्ञवल्क्यादिक्रममिति विरोध-माशङ्क्य परिहृतम्, अत्रेदं शास्त्रतत्त्वमित्युपक्रम्य लिखितञ्च पत्नीमारभ्य श्रोत्रिय-पर्य्यन्तस्यापुत्रब्राह्मणधने राजपर्य्यन्तस्यापुत्राब्राह्मणधनेऽधिकारित्वम्। एतद्दर्शनाच्च शङ्खलिखितवचनेऽपि व्यवहितकल्पना कार्य्येति देवलवचने अलब्धक्रमे याज्ञवल्क्य-विष्णूक्तः क्रमोऽन्वेतीति देवलवचनलिखनानन्तरं याज्ञवल्क्यविष्णुवचने लिखितवतः कल्पतरुकारस्याभिप्रेतम्। वस्तुतस्तु पैठीनसिवाक्ये अपुत्रस्य प्रमीतस्य भ्रातृगामि द्रव्यमिति पितृपितामहाद्यर्जितधनेतरधने, तदभावे मातापितराविल्यपि अन्यत्र खण्डे क्रमादर्शनमेवेति न विरोधः। याज्ञवल्क्यः। पत्नी दुहितरश्चैव पितरौ भ्रातरस्तथा। तत्सुतो गोत्रजो बन्धुः शिष्यः सब्रह्मचारिणः। एषामभावे पूर्व्वस्य

धनभागुत्तरोत्तरः। स्वर्यातस्य ह्यपुत्रस्य सर्व्ववर्णेष्वयं विधिः। एषां पत्नीदुहितृजननीजनकभ्रातृतत्सुतगोत्रजबन्धुशिष्यसब्रह्मचारिणां पूर्व्वस्य पूर्व्वस्य अभावे धनभागुत्तरोत्तरो भवतीत्यर्थः। पत्नी चात्रोत्तमगुणा विवक्षिता। अपुत्रत्वमत्र पौत्रप्रपौत्रशून्यत्वमपि विवक्षितमिति प्रकाशकारेण द्योतितम्। युक्तञ्चैतद्व्यवहारिकत्वात्। यद्यपि पितराविति समुच्चितनिर्द्देशेन समुच्चिताधिकार आपाततो भाति तथापि भार्य्यासुतविहीनस्य तनयस्य मृतस्य च। माता रिक्थहरी ज्ञेयेति पितृनैरपेक्ष्येणैव भार्य्यासुताभावे मातुरधिकारबोधनान्मात्रभावे पित्रधिकारबोधनमनेनेति। विष्णुः। अनपत्यधनं पत्न्यभिगामि, तदभावे दुहितृगामि, तदभावे मातृगामि, तदभावे पितृगामि, तदभावे भ्रातृगामि, तदभावे भ्रातृपुत्रगामि, तदभावे बन्धुगामि, तदभावे सकुल्यगामि, तदभावे सहाध्यायिगामि, तदभावे ब्राह्मणधनवर्जं राजगामि। बन्धुरत्र सपिण्डः, सकुल्यः, सगोत्र इति मिश्राः। दुहितृदौहित्रानन्तरं वृहस्पतिः। तदभावे भ्रातरस्तु भ्रातृपुत्राः सनाभयः। सकुल्या बान्धवाः शिष्याः श्रोत्रियाश्च धनार्हकाः। मृतोऽनपत्यभार्य्यश्चेदभ्रातृपितृमातृकः। सर्व्वे सपिण्डास्तद्दायं विभजेरन् यथांशतः। समुत्पन्नाद्धनादर्द्धं तदर्द्धं स्थापयेत् पृथक्। मासषाण्मासिके श्राद्धे वार्षिके वा प्रयत्नतः। बहवो ज्ञातयो यत्र सकुल्या बान्धवास्तथा। यो ह्यासन्नतरस्तेषां सोऽनपत्यधनं हरेत्। मासषाण्मासिके इत्यादौ निमित्तसप्तमी। अनपत्यमुद्दिश्यापस्तम्बः। पुत्राभावे प्रत्यासन्नः सपिण्डस्तदभावे आचार्य्यस्तदभावे अन्तेवासी, कृत्वा तदर्थं चोपयोजयेत्तद्दुहिता वा। बौधायनः। प्रपितामहः पितामहः पिता स्वयं सोदर्य्या भ्रातरः सवर्णायाः पुत्रः पौत्रः प्रपौत्र एतानविभक्तदायादान् सपिण्डानाचक्षते, विभक्तदायादान् सकुल्यानाचक्षते, असत्स्वङ्गजेषु तद्गामी ह्यर्थो भवति, सपिण्डाभावे सकुल्यस्तदभावेऽप्याचार्य्योऽन्तेवासी, ऋत्विग् वा हरेत्, तदभावे राजा। इयञ्च परिभाषा दायविषया नत्वशौचादिविषया तत्र समानपिण्डाः सपिण्डाः, तेन विभक्तदायादा अपि सपिण्डाः, ते च विभक्तदायादा अत्रासपिण्डा.। अङ्गजेष्वौरसादिषु, तद्गामी सपिण्डादिगामी। नारदः। अभावे तु दुहितॄणां सकुल्या बान्धवास्तथा। ततः सजात्याः सर्व्वेषामभावे राजगामि तत्। अन्यत्र ब्राह्मणात् किन्तु राजा धर्म्मपरायणः। तत्स्त्रीणां जीवनं दद्यादेष दायविधिः स्मृतः। सकुल्याः पितृव्यपुत्रादयः, सजात्या एकजातीयाः, किन्त्वत्यादि निर्द्धनब्राह्मणस्त्रीविषयम्। मनुः। सर्व्वेषामप्यभावे तु ब्राह्मणा रिक्थभागिनः। त्रैविद्याः शुचयो दान्तास्तथा धर्म्मो न हीयते। अहार्य्यं ब्राह्मणधनं राज्ञा नित्यमिति स्थितिः। इतरेषान्तु वर्णानां सर्व्वाभावे हरेन्नृपः। सर्व्वत्रादायकं राजा हरेद्-

ब्रह्मस्ववर्ज्जितम्। अदायकञ्च ब्रह्मस्वं श्रोत्रियेभ्यः प्रदापयेत्। अदायकं दायादशून्यम्। बौधायनः। ब्रह्मस्वं पुत्रपौत्रघ्नं हन्त्यादेकाकिनं विषम्। तस्माद्राजा ब्राह्मणस्वं नाददीत कथञ्चन। परमं ह्येतद्विषं यद्ब्राह्मणस्वमिति। बृहस्पतिः। येऽपुत्राः क्षत्रविट्शूद्राः पत्नीभ्रातृविवर्ज्जिताः। तेषां धनं हरेद्राजा सर्व्वस्याधिपतिर्हि सः। शङ्खलिखितौ। परिषद्गामि वा श्रोत्रियद्रव्यं न राजगामि, न हार्य्यं राज्ञा देवब्राह्मणसंस्थितम्। सनिक्षेपोपनिधिक्रमागतं न बालस्त्रीधनानि एवं ह्याह,—न हार्य्यं स्त्रीधनं राज्ञा तथा बालधनानि च। नार्य्यः षडागमं वित्तं बालानां पैतृकं धनम्। परिषद्ब्राह्मणाः। उपनिधिर्निक्षेपविशेषः। पारिजाते क्रमागतं पितृपरम्परया आगतम्। षडागमम् अध्यग्न्यादिषडागमलब्धम्। मनुः। बालदायागतं रिक्थं तावद्राजानुपालयेत्। यावत् स स्यात् समावृत्तो यावद्वातीतशैशवः। बालदायागतं बालस्वामिकमनुपालयेद्दायादेभ्यो रक्षयेत्। विष्णुः। बालानाथस्त्रीधनानि राजा परिपालयेत्। शङ्खलिखितौ। रक्षेद्राजा बालानां धनान्यप्राप्तव्यवहाराणां श्रोत्रियवीरपत्नीनां प्रहीणस्वामिकानि राजगामीनि भवन्ति। श्रोत्रियवीरपत्नीनां श्रोत्रिये वीरे प्रोषितेऽपगते वा तत्पत्नीनाम्। पुत्राधिकारे बौधायनः। तेषामप्राप्तव्यवहाराणां सोपचयानंशान् सुगुप्तान् निदध्यादाव्यवहारप्रापणात्। सोपचयान् सवृद्धिकान्, सुगुप्तान् सुरक्षितान्। आङ् अभिविधौ, तेन सप्तदशवर्षात् प्राक्। कात्यायनः। प्रोषितस्य तु यो भागो रक्षेयुः सर्व्व एव तम्। बालपुत्रे मृते ऋक्थं रक्ष्यं तत्तन्नुबन्धुभिः। पौगण्डाः परतस्तन्तु विभजेरन्यथांशतः। बालपुत्रे बालः पुत्रो यस्य तस्मिन्, पौगण्डोऽतिबालो व्यवहारानभिज्ञः। विष्णुः। यश्चांशहरः स पिण्डदायी। स्मृतिः। यो धनमाददीत, स तस्मै श्राद्धं कुर्य्यात्, पिण्डञ्च त्रिपुरुषं दद्यात्। अत्र श्राद्धशब्देन प्रोषितैकोद्दिष्टान्युच्यन्ते इति प्रकाशकारः। बृहस्पतिः। भ्राता वा भ्रातृपुत्रो वा सपिण्डः शिष्य एव वा। सहपिण्डक्रियां कृत्वा कुर्य्यादभ्युदयं ततः। वशिष्ठः। पुत्रः पितृवित्तालाभेऽपि पिण्डं दद्यात्। अथ विष्णुः। वानप्रस्थधनमाचार्य्यो गृह्णीयाच्छिष्यो वा। याज्ञवल्क्यः। वानप्रस्थयतिब्रह्मचारिणामृक्थभागिनः। क्रमेणाचार्य्यसच्छिष्यधर्म्मभ्रात्रेकतीर्थिनः। क्रमेण प्रतिलोमक्रमेण. तेन ब्रह्मचारिणो नैष्ठिकस्य धनमाचार्य्यो गृह्णीयात्. यतेर्धनं सच्छिष्योऽध्यात्मशास्त्रश्रवणधारणतदर्थानुष्ठानदक्षः। वानप्रस्थधनं धर्म्मभ्रात्रेकतीर्थी गृह्णाति, धर्म्मभ्राता भ्रातृत्वेन प्रतिपन्नः, एकतीर्थी एकाश्रमी। यद्यप्येवं अनंशाःआश्रमान्तरगता इति वशिष्ठवचनेन विरोधः तथापि यथाकथञ्चिद्वनवस्त्रमादाय समाधेयमिदम्। इति विवादरत्नाकरे अपुत्रधनविभागतरङ्गः।

CHAPTER XXXV.

अथ: संसृष्टिविभाग:। अत्र मनु:। विभक्ताः सह जीवन्तो विभजेयुः पुनर्यदि। समस्तत्र विभागः स्याज्ज्यैष्ठ्यं तत्र न विद्यते। सह जीवन्तः संसृज्य जीवन्तः, समस्तत्र विभागो ज्येष्ठोद्धारादिकं न स्यादित्यर्थः। तथा। येषां ज्येष्ठः कनिष्ठो वा हीयेतांशप्रदानतः। म्रियेतान्यतरो वापि तस्य भागो न लुप्यते। संसृष्टानां भ्रातॄणां मध्ये यदि कश्चित् प्रव्रज्यादिना हीयेत म्रियेत् वा, तदा तस्य भागो न लुप्यते। कस्तर्हि तं गृह्णीयादित्यत आह। सोदर्य्या विभजेरंस्तं समेत्य सहिताः समम्। भ्रातरो ये च संसृष्टा भगिन्यश्च सनाभयः। सोदर्य्या भ्रातर इत्यन्वयः। तेन भ्रातॄणामेव मध्ये संसृष्टाः सोदरत्वसंसृष्टत्वरूपोभयप्रयोजकविशिष्टवन्तस्तमंशं गृह्णीयुरित्यर्थः। भगिन्यश्च सनाभयः, सनाभयः सोदराः ताश्चाप्रदत्ताः, प्रदत्ताः पुनः पतिगोत्रमासादयन्तीति प्रकाशः। वृहस्पतिः। संसृष्टो यो पुनः प्रीत्या तौ परस्परभागिनौ। तथा। विभक्ता भ्रातरो ये तु सम्प्रीत्यैकत्र संस्थिताः। पुनर्विभागकरणे ज्यैष्ठं तेषां न विद्यते। कदाचिद्वा प्रमीयेत प्रव्रजेद्वा कथञ्चन। न लुप्यते तस्य भागः सोदरस्य विधीयते। या तस्य भगिनी सा तु ततोऽंशं लब्धुमर्हति। अनपत्यस्य धर्म्मोऽयमभार्य्यापितृकस्य च। संसृष्टानान्तु यः कश्चिद्विद्याशौर्य्यादिनाधिकम्। धनं प्राप्नोति तत्रास्य दद्युरंशं शेषाः समांशिनः। विद्याशौर्य्यादिना असाधारणप्रयोजकरूपवदन्येन। नारदः। संसृष्टानान्तु यो भागस्तेषामेव स इष्यते। अतोऽन्यथांशभाजस्तु निर्बीजेष्वितरान्नियात्। अतोऽन्यथा संसृष्टिनामभावे, निर्बीजेषु सन्तानरहितेषु, इतरानंशभाजोऽसंसृष्टिनो भाग इयाद्गच्छेत्। प्रकाशकारस्तु अतोऽन्यथा पुत्रवत्त्वेऽपि तु एवांशभाजः। निर्बीजेषु सन्तानरहितेषु भ्रातॄन् भाग इयाद्गच्छेदित्याह। पारिजाते तु अतोऽन्यथा अनंशभाज इति पठितं, तत्तु बहुग्रन्थविसंवादादयुक्तम्। शङ्खः। भ्रातॄणामप्रजाः प्रेयात्कश्चिच्चेत् प्रव्रजेत वा। विभजेरन् धनं तस्य शेषास्ते स्त्रीधनं विना। भरणञ्चास्य कुर्व्वीरन् स्त्रीणामाजीवनक्षयात्। रक्षन्ति शय्यां भर्त्तुश्चेदाच्छिन्द्युरितरासु तत्। या तस्य दुहिता तस्याः पित्र्यंशो भरणे मतः। आसंस्कारात् हरेत् भागं परतो बिभृयात् पतिः। स्त्रियोऽत्रावैधव्यव्रतादिसहिताव्यभिचारिण्यः। अभार्य्यापितृकस्य चेत्यत्र भार्य्याशब्दो वैधव्यव्रतादिसहिताव्यभिचारिणीपरः। पारिजाते तु स्त्रियोऽत्र सवर्णा इत्युक्तम्। तेन तन्मते भार्य्याशब्दः पूर्व्वसवर्णभार्य्यापर इति लक्ष्यते। इतरासु शय्यामरक्षन्तीषु। आसंस्काराद्-

विवाहमभिव्याप्य तावन्तं भागं हरेद्यावता विवाहस्य निष्पत्तिरिति कल्पतरुः। याज्ञवल्क्यः। संसृष्टिनस्तु संसृष्टी सोदरस्य तु सोदरः। दद्यादपहरेद्भागं जातस्य च मृतस्य च। संसृष्टिनो मृतस्य तु धनं संसृष्टी हरेत् न त्वंशहरः सोदरस्य तु सोदरः। सोदरासोदरसमर्गे सोदर एव गृह्णीयादित्यर्थः। इदानीं सोदरस्यासंसृष्टस्य वैमात्रेयस्य संसृष्टस्य सद्भावे संसृष्टिनि मृते यद्भवति तदाह। अन्योदर्य्यस्तु संसृष्टी नान्योदर्य्यो धनं हरेत्। असंसृष्ट्यपि चादद्यात संसृष्टो नान्यमातृजः। नान्योदर्य्यो धनं हरेदसंसृष्टीति श्लोकच्छेदः। अनेनान्वयव्यतिरेकतोऽन्योदर्य्यसंसृष्टित्वं धनहरणकारणमित्युक्तं न तु संसृष्टीति पदेनापि सम्बध्यते तेनासंसृष्ट्यपि धनमाददीत, कोऽसावित्याकाङ्क्षायामुक्त, संसृष्टः एकगर्भशोणितसम्भवः सोदर इति यावत्, अनेन चासंसृष्टस्यापि धनग्रहणे सोदरत्वमपि हेतुरुक्त.। तेनोभयोरेव धनग्रहणहेतुमत्त्वादुभयोरपि धनग्राहकत्वमुक्तम्। यत्तु कल्पतरौ नान्योदर्य्यधनं तेन अन्योदर्य्यस्य संसृष्टिनो धनमन्योदर्य्ये संसृष्टी न हरेदित्यर्थः। अन्ये तु अन्योदर्य्यस्तु संसृष्टी नान्योदर्य्यधनं हरेदिति ऋजुमेवार्थमनुमन्यन्ते। कात्यायनः। संसृष्टानान्तु संसृष्टाः पृथक्स्थानां पृथक्स्थिताः। अभावेऽंशहरा ज्ञेया निर्बीजान्योन्यभागिन.। संसृष्टानां मृतानां संसृष्टा अंशहराः, पृथक्स्थानां मृतानां पृथक्स्थिता अंशहरा ज्ञेयाः, अभावे भार्य्याद्यभावे। निर्बीजान्योन्यभागिन इति द्वन्द्वसमासः। बृहस्पतिः। विभक्तो यः पुनः पित्रा भ्रात्रा चैकत्र संस्थितः। पितृव्येणाथवा प्रीत्या स तु संसृष्ट उच्यते। अनास्थायां वाकारः, तेन पितृव्यजेनाप्यंशिना कृतविभाग एकत्र स्थितः संसृष्टः सर्व्वलोके परिगृहीतो लभ्यते। प्रकाशे तु वचनबलेन नियम एवावेत्युक्तम्। इति विवादरत्नाकरे संसृष्टिविभागतरङ्गः।

PARASARA MADHAVA.

PARTITION OF HERITAGE.

NOW IS DESCRIBED THE TITLE OF LAW DESIGNATED PARTITION OF HERITAGE.

Definition of Daya

1. On this subject Narada says: "Where a partition of the paternal property is instituted by the sons, it is called by the learned partition of heritage, a title of property." Daya means the wealth which becomes another person's by reason of ownership attaching to it (on account of being son and the like mentioned in the law of partition of heritage) It is of two kinds, the unobstructed and the obstructed. The wealth of the father or grandfather is unobstructed heritage The wealth of sons and the like taken by the father and the like is obstructed heritage The partition of these is called partition of heritage The Sangrahakara also says: "Property derived from the father or from the mother is designated Daya or heritage Its partition is now dealt with," &c.

Time for partition.

2. The time for partition is mentioned by Manu Manu, (Ch. IX, V 43): 'After the decease of the father,' is the time for the partition of paternal wealth. 'After the decease of the mother' is the time for the partition of maternal wealth After that, the following should be said. After the death of the father, even when the mother is living, the partition of paternal wealth may be made. Similarly after the dealth of the mother, even when the father is living, the maternal wealth may be divided. This is because in regard to the partition of the wealth of either waiting for the death of both as inappropriate. That is mentioned by the Sangrahakara "As the partition of paternal wealth (may be on the death of the father) even when the mother is living as the mother has no right of ownership without her husband on account of her want of independence. Similarly (there may be partition of) the mother's wealth while the father is living as when there are children, the husband is not the master of Stridhana."

3. This is the meaning. As on the death of her husband, the wife of the father has no right of ownership on account of her want of independence and as when there are children, the husband has no right to the property of the wife on her death, therefore if one of them be alive, the partition of the heritage of the other is proper.

4. By this it should be understood that when they are living, the sons have no independent power to partition their property. To that effect says Sankha : "When the father is alive, the sons should not divide the wealth," though there may be subsequently acquired property, the sons are not deserving because of their want of independence in regard to wealth and religious works." The meaning of this is : on birth, sons become possessed of the cause of getting paternal wealth, still as long as the father is living, they should not divide that wealth because they are not deserving of partition on account of their want of independence in regard to wealth and religious works Want of independence in regard to wealth means want of power of receiving or giving So says Hareeta : "When the father is alive, the sons have no independence in respect of receipt, alienation and spending of property " Receipt of property means enjoyment of property. Alienation means expenditure. Spending means spending for the instruction of servants and the like. Want of independence in religious ceremonies means non-obligation to separate performance of Ishta and Purta works. The text of Devala "the sons divide the father's wealth on the death of the father ; they have no right when the father without defect is alive" only proves the want of independence of sons, because in the paternal wealth the right of sons by birth is established among the people.

5. But how can ownership, which is established by Shastras, be established by popular opinion ? What is established by the Shastras is understood from the following text of Gautama : "A man becomes owner by inheritance, purchase, partition, possession or finding. Acceptance is for Brahmins an additional mode, conquest for a Kshatriya and gain for a Sudra or Vaisya " Inheritance means unobstructed heritage and not obstructed heritage. Partition means obstructed heritage Possession means possession of water, fuel, &c, which did not belong to another. Finding is the finding of buried wealth. Ownership arises for these causes. What the Brahmin obtains by acceptance is an additional and special mode. The gain of the Kshatriya by conquest, punishment, &c., is also special The gain of the Vaisya by agriculture or keeping cows, &c , is also special. The gain of the Sudra as salary for serving the twice-born, &c., is also special. Similarly gains of those born of mixed marriages by means of actions like driving horses and carriages as settled are also additional modes. In this connection the Sangrahakara says : 'It is not (true as a rule) that the property in the hand of a man belongs to him." When the property of another is in the hands of

Character of ownership discussed.

a person, it does not belong to him. Therefore right accrues on account of the texts of Shastras. Further if the property with one belongs to him, then it can not be said that such property is stolen (when it is stolen), because property in the possession of one would belong to him. If it is contended that right to property arose from temporal causes, then there can be no liability to punishment enjoined in the text: "the Brahmana who by officiating as priest, or by teaching takes wealth from a person who gives what cannot be given is a thief," by acquisition of wealth by priestly services from one incompetent to give. Therefore right to property arises from Shastras."

This is not correct. Right to property arises from temporal causes, because it is used for purposes temporal, like corn The sacrificial fire may be used for temporal purposes like cooking. But it is not as sacrificial fire that it is used for cooking. Again as the sinful can have legal rights to property, therefore right to property is temporal

It is objected that if ownership is temporal, the text of Gautama: "a man becomes owner by inheritance, purchase and partition," &c., becomes infructuous, (because acceptance and the like peculiar to Brahmins, &c if temporal, would apply to all) It is not so. Because even if the mode of acquiring ownership by acceptance be temporal, it is peculiar to Brahmins, because such a mode is prescribed by the Shastras (as peculiar to them) Again if it is objected that if ownership be only temporal, it cannot be said that the property of one is stolen by another That is also not correct. Because there may be doubt as to right when there is doubt as to the fact of purchase, &c, which alone produces ownership. As to the objection that then the text "he who (receives) from the giver of invalid gifts," &c, by which there is punishment for one who accepts gifts by officiating as priest from one who gives which can not be validly given becomes infructuous, that also is untenable. Because the mode of ownership by acceptance being temporal, there may be punishment for him who acquires property by overriding the rule of such of acquisition For this reason the text: "(men) become pure by giving up" (such things), prescribes the expiation (for the acquirer) Thus ownership being temporal, the wealth acquired by improper acceptance and the like, becomes the wealth in which the sons of the acquirer have ownership by inheritance, which is capable of partition and there is no fault in the sons from the text of Manu: "There are seven lawful modes of acquiring property (*viz.*), inheritance, finding or friendly donation, purchase, conquest, lending at interest, the performance of work and the acceptance of gifts from virtuous men."

Partition defined.

6. Here it should be considered whether right to property arises from partition or partition is of (existing) right. Here the argument of the first party is: Proprety arises out of partition, for if right arises only by birth, then as soon as the son is born the property becomes common (to both) and the father can have no right to perform the fire-sacrifice by things necessary for it. Again the text (of Narada) says. ' What has been given by loving husband to his wife, that she may spend or give away as she likes after his death, except immoveables" This text about affectionate gift also becomes ineffectual. As to the text. "The father is master of the gems, pearls and corals and of all other (moveable) property; but neither the father nor the grandfather is so of the immoveable property By the affectionate gift of the father, clothes and ornaments are gained; immoveable property is not gained even with the father's indulgence." This refers to grandpaternal immoveable property. Therefore right accrues by the death of the last owner or by partition and not by birth.

Ownership is by birth.

7 The true conclusion however is (as follows). In this world that right arises by birth is well-known Partition, it is well-known in this world, is applicable to property (jointly) belonging to many owners and not to other men's property or to dead men's property. Again from the text of Gautama, "ownership arises by birth say the masters" right is inferred as accruing by birth. The contention that the text, "the father is master of gems, pearls, corals, &c," refers to grandpaternal immoveable property, &c, is not proper For from the text "neither the father nor grandfather is so, &c," the self-acquired property of the grandfather belongs to son and grandson and can not be given and right accrues by birth. As to the contention that the father will in that case have no right to perform fire-sacrifice requiring wealth, that also is improper, for that right arises by virtue of texts. Again what has been said that if right is by birth, the text of Vishnu, * "what has been given by a loving husband," becomes ineffectual That also is not proper. Even in property being common (to father and son) the right of the father to make affectionate gift in (moveable property) arises by virtue of the text. In immoveable property however, even when it is self-acquired, there is the father's dependence on sons (in the matter of alienation) from the following text: "Though immoveables and bipeds have been acquired by a man himself, a gift or sale of them should not be made, without convening all the sons. They

* Vishnu should be Narada.

who are born, and they who are yet unbegotten and they who are still in the womb require the means of support, no gift or sale should therefore be made." In case of distress (or emergency) however, the father has independent power to alienate) from the text. "even a single individual may conclude a donation mortgage, or sale of immoveable properry, during a season of distress, for the sake of the family, and especially for pious purposes" Therefore it is well said that ownership is by birth Now let us follow up what has been accomplished

Father's power of distribution

8 Another time of partition is mentioned by Yajnavalkya · "A father when making partition can divide among his sons as he pleases, either giving to the eldest the best share or in such wise that all share equally"

When the father desires to partition, he divides the property among the sons according to his desire The mode of partition according to desire (is described by) "by giving to the eldest the best share," &c The best share means the share with the preferential share The preferential share is described in another Smriti "One twentieth is the preferential share of the eldest and the best of all things, half of it is that of the middlemost and one-fourth of the youngest." Of all the sons beginning with the eldest are equal sharers This unequal division applies only to self-acquired property In ancestral property all have equal shares from the impropriety of unequal division by father's desire

Sons' power to partition.

9. Narada also mentions another period of partition: "The father being dead, the sons shall divide the estate as they ought (The partition shall take place) when the mother has ceased to menstruate and the sisters are married or when the father's sexual desire is extinguished and he has ceased to care for wordly interests" Sankha also says: "There may be partition when the father is without desire, old, when his intellect is perverted or afflicted with longstanding disease." The meaning of this is: without desire *i.e*, when the father does not desire a share, is very old, perverted, *i.e.*, not in his proper mind, or afflicted with longstanding, *i.e*, incurable disease, there may be partition at the desire of sons By the mention of longstanding, extreme anger and the like by analogy are implied. Therefore Narada says · "A father, who is diseased or angry or absorbed in worldly interests or who acts illegally has not the power to divide (as he likes)."

Wives of father entitled to equal share.

10. A special rule is mentioned by Yajnavalkya in the matter of equal division by the father: "If he give equal share, such of his wives as have not received Stridhana from their husbands or father-in-law shall also equally share."

If by his own desire the father makes the sons equal sharers, then he should make his wives to whom Stridhana has not been given, equal sharers with the sons When Stridhana has been given, by virtue of the text, "when Stridhana has been given, half should be given," they each get half the share of a son.

When there is Stridhana mother entitled to half share.

11 After the death of the father, partition should be made for the increase of religious works, so says Prajapati: "Either let them thus live together or apart if each desires spiritual merit. Dharma increases when separate, therefore separate works are proper" *

Partition after father's death

Vrihaspati also says "The worship of the Manes, Gods and Brahmans by those residing together and cooking their food (in one house) is single But when they separate these take place separately in each house"

Yajnavalkya mentions the mode of partition after the death of the parents: "After decease of the parents, let the sons make equal division of the property and of the debts."

(The texts about preferential share are omitted as unimportant).

When the father makes partition during his lifetime, unequal division is mentioned by Narada: "Or let a father distribute his property among his sons himself, when he is stricken in years, either allotting a larger share to the eldest son or in any way according to his pleasure When a father has distributed his property among his sons in equal, less or greater shares, that is lawful distribution for them. Two shares let the father keep for him while partitioning"

Division by the father.

Vrihaspati also says "Those (sons) for whom their shares have been arranged by the father, whether equal, less or greater, must be compelled to abide by such arrangement. Othewise they shall be punished"

Therefore when there may be unequal division in partition during father's lifetime, how can it be a rule that sons should divide equally? That cannot be. It is true that according to the Shastras there may be unequal division but that should not be practised because of its being abhorred by the world, like the sacrifice of a barren cow. The Sangrahakara says · "As Niyoga or getting a child by appointment and sacrifice of a barren cow (are prohibited) so unequal partition by allowing preferential shares is (not allowable) in these days."

Unequal division and preferential shares unlawful

* Identical with Manu, VIII, 9.

Apastamba also after expressing his own opinion : "he should, during his life-time divide his wealth equally amongst his sons," says "some declare that the eldest alone inherits" as the opinion of some to the effect that the eldest son takes the entire heritage, and then he says. "In some countries gold (or) black cattle (or) black produce of the earth is the share of the eldest The chariot and the furniture on the house are the father's (share) According to some, the share of the wife consists of her ornaments and the wealth, (which she may have received) from her relations" Thus having shown that in the opinion of some there may be preferential share, he refutes it by saying that "that is prohibited by the Shastras" That prohibition by the Shastras, is also shown by himself by saying: "Vedas declare Manu divided his wealth equally among his sons." Thus unequal division, even if it be established by the texts of the Smritis, is not to be practised because it is against popular opinion and also against the Vedas. Thus the rule is established that there should be equal division.

When a brother on account of his ability to earn property, does not desire paternal property, there should be partition by giving him something in order to prevent his sons desiring to share the heritage (in future). So says Yajnavalkya : "If one have means and do not desire to share, he shall be separated, something trifling being given to him"

Partition of mother's estate.

12. Sons can take mother's wealth in the absence of daughters. Yajnavalkya says: "Daughters take what is left of the mother's wealth after paying her debts, and if there be no daughters, the sons or other issue take."

Order of succession to maternal property.

13 The daughters take what remains of the wealth of the mother after paying her debts From this it is to be understood that even when there are daughters, sons take the wealth of the mother when it is equal to or less than her debts. In this connection a distinction is shown by Gautama : "Stridhana goes to unmarried daughters and to poor (unprovided married) daughters" When there are both married and unmarried daughters, the mother's wealth goes to the unmarried daughters. Among married daughters, when there rich and poor married daughters, it goes to the poor daughters

Division according to stock.

14. In grandpaternal property there is a special rule of partition mentioned by Yajnavalkya : 'Among several grandsons, allotment of shares is according to the share which their fathers would have taken." When the undivided brothers of the father die leaving sons and one leaves two sons, another three and another four, then

though the grandsons' right to grandpaternal wealth is by birth, still they get their respective father's share, two taking one share, three one and four one (in the case mentioned). To that intent Vrihaspati says: "Their sons, whether unequal or equal in number, are declared heirs of the shares of their respective fathers." Their sons, *i e*, sons whose fathers are dead, when unequal in number take the shares of their respective fathers.

15. If among two undivided sons, one brother is dead, the son (of the latter), if he has not received his share from the grandfather and the grandfather is dead, (in that case the following rule) is laid down by Katyayana: "When an undivided younger brother dies, his son should be made sharer, if he has not received maintenance from the grandfather. He should get his paternal share from the paternal uncle or his son The very same share shall equitably belong to all the brothers. Or his son receives it After that is a cessation of right." "Or his son receives it". the meaning of it is: the son of the grandson of the owner of the property to be partitioned, in default of his father, gets the share to which the latter would have been entitled In case of descendants beyond that degree, there is no right to share on partition in the greatgreatgrandfather's property So also says Devala: "Of members of the same family divided or undivided living together, there should be partition of the heritage among the descendants of the fourth degree. Up to that degree the members of the family are of the same body. After that there is difference of body."

Right to share extends to greatgrandson, after that it ceases.

16. Vrihaspati observes in reference to the question how there can be partition in regard to paternal property with the father of one whose father is living: "In property acquired by the grandfather, whether immoveable or moveable, father and son are declared to be entitled to equal shares."

Partition with the father.

Yajnavalkya also says "Inasmuch as the ownership of father and son is co-equal in the acquisitions of the grandfather, whether they be land, any assigned property or gold and silver and the like, in them the ownership of the father and son is equal." *Bhu* (immoveable property) here means cornfield and the like. *Nibandha* means what is assigned to one saying these Pan leaves out of a heap of Pan leaves and these areca nuts out of a heap of areca nuts belong to him. *Drabya* means gold, silver and the like. In what has been acquired by the father by acceptance of gifts or by victory, the equal ownership of father and son is well-known to the people and thus there may be partition between them. Because, there is equal ownership, therefore partition is not at the option of the father, nor has he

got a double share on partition. In this also, though ownership is equal, it is on account of special texts that among several grandsons allotment of share is according to the share their fathers could have taken.

Father can't get double share.

Therefore the texts, (of Narada): "Two shares let the father keep for himself when partitioning" and the like ordaining unequal allotment of shares should be considered as having been only applicable in a past age or in respect of self-acquired property.

Son's right in grand-paternal property.

17. In respect of grandpaternal property there can never be unequal partition. Also in grandpaternal property, when it is being wasted or sold by the father, the grandson (*i.e.*, son of the father) has the right to forbid such acts.

In property, acquired by the grandfather in some cases, there may be division according to father's desire as in regard to his self-acquired property So says Manu. "If a father recovers lost ancestral property, he shall not divide it unless by his own will, with his sons, (for it is) self-acquired property" If the father recovers property acquired by the grandfather of which he had been deprived by another, then if he unwilling, he should not divide it with his sons like his self-acquired property Vrihaspati also says: "In grandpaternal property once lost and afterwards recovered by the father, in self-acquired property and in what is acquired by learning or valour, the father's power of disposal is declared." Katyayana also says "Whatever lost property is recovered or whatever property is acquired by the father he should not be compelled to give a share to the sons." Whatever ancestral property which might have been wrongfully taken by another and such lost property is recovered by his own efforts, whatever is acquired by himself by learning, valour and the like, of all that the father cannot be compelled to give a share to the sons.

Share of the afterborn son.

18. The mode of allotment of the share of a son born after partition is thus described by Yajnavalkya: "If a son be born of a wife of equal caste, after partition, he is entitled to share." The meaning of this is: A son born of a wife of equal caste born after partition gets his father's share; and also the mother's share, when there is no daughter, from the texts: "if there be no daughters the sons &c. take." If born of a wife of a different caste, the son takes only his own legal share from the father's property but of the mother's property he takes the whole. Therefore Manu says: "But a son, born after partition shall alone take the property of both the parents." Here the word Pitrya means belonging to both parents, because of the text (of Vrihaspati): "One born before partition is not entitled

to the share of his both parents, nor is one born after partition to the brother's share." A son born after partition is not entitled to the share of both mother and father. One born after partition is not entitled to his brother's wealth Whatever is acquired by the father after partition belongs to the son after-born. So says Manu : "Whatever the father acquires when separate from his son belongs to the son born after partition, the sons born before have no right to it"

Those who having separated reunite with their father, share with the after-born son Manu says "or if any of them be reunited with the father, he (the after-born son) shall share with them"

19. The share of a son born after partition after the death of the father is thus ordained by Yajnavalkya : "Or a share may be allotted to him from the estate as it is, after allowing for income and expenditure" *Share of son born after partition.*

The father being dead and the mother being pregnant, though not known to be so, at the time of the partition among brothers, the son born after such partition among brothers should be given a share equal to that of his other brothers, after allowing for increase and decrease of the property This rule applies also to the case, when the widow of a deceased brother is pregnant and is not known to be so, at the time of partition. When pregnancy is known, the partition should take place after delivery, from the text of Vasista : "Now follow the rules regarding the partition among brothers. And (let it be delayed), until the childless widows (who are supposed to be pregnant) bear sons." The after-born son has no right to forbid the giving of wealth by both parents to the separated sons If any property has thus been given, it cannot be taken back, as says Yajnavalkya : "Whatever property may be given by the parents to any child, shall belong to that child"

20 On partition after father's death, Yajnavalkya defines the share of the mother thus : "If partition be made after the father's death, the mother shall also have an equal share." This should be understood as applicable to the case where no Stridhana had been given. When Stridhana had been given, she should get half of a share, from the text: "(If Stridhana) had been given, she takes a half share." Therefore another Smriti says : "If the mother is without wealth, she takes a share equal to that of a son, on a partition among the sons." *Mother's share after father's death.*

21. A mother, who is without wealth, *i.e.*, without her own Stridhana, takes a share equal to that of a son, when the sons partition. This is the meaning. The word Janani, *Stepmother's share.*

is here used as signifying also stepmothers by analogy. Vyasa says to that effect : "But the sonless wives of the father are declared equal sharers : and all the grandmothers also are declared equal to mothers (as sharers)."

Mother's share is not what is sufficient for maintenance.

22 Some say that the mother takes an equal share means that she only takes wealth sufficient for her maintenance. This is not correct, because then the words share and equal would be meaningless. They again say that when there is much wealth the mother takes what is sufficient for her maintenance but when there is little wealth, she takes an equal share. This also is not correct, because there will be variability in the rule which is not allowable *

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Rituals of brothers.

23 On partition after the death of the father, if some of the brothers had not their ritual ceremonies performed or the ritual ceremonies of some sisters had not been performed, the brothers whose ceremonies had been previously performed should perform the ceremonies. So says Vyasa : "Those brothers whose ritual ceremonies had not been performed, as well as the unmarried sisters should get their ritual ceremonies performed by the elder brother"

Unmarried sister's share.

24 In respect of the ceremonies of the sister, Yajnavalkya lays down a special rule. "Those of the brothers whose ritual ceremonies have not been accomplished, shall have them completed by others whose ritual is gone through. So in like manner as to the ritual of sisters (each of the brethren) devoting a fourth part of his share"

Brothers partitioning after the death of the father should perform the ritual ceremonies of brothers whose rituals have not been performed, with all the wealth if necessary. The ritual ceremonies of a sister whose ceremonies had not been performed, should be performed by giving one-fourth of the share of a brother of the same caste with her. From this it is understood that the daughters are sharers after the death of the father. Therefore Manu says : "To the maiden sisters, the brothers shall severally give (portions) out of their shares, each out of his share one-fourth part, those who refuse to give will be outcastes."

The sons (of mothers of the caste) Brahmana and the rest should give to the sisters, Brahmani and the rest, shares one-fourth of the share of each ordained according to his caste. It should be observed that if one has only a Brahmini wife and one daughter, then the paternal wealth should be first divided into two equal parts out of which

* Next follow a discussion on the rights of sons by wives of different castes. It is omitted as unimportant.

one part should be divided into four shares and one of these four shares should be given to the daughter and the rest should be taken by the son When there are two sons and one daughter, the property should be divided into three equal parts, out of which one should be divided into four equal parts, of which one should be given to the daughter and the rest to the two sons. When there is one son and two daughters, then the paternal wealth hould be divided into three equal parts, out of which one should be divided into four parts, of which two should be given to the two daughters and all the rest to the son This method is to be applied to all cases of brothers and sisters of the same caste and to cases where the numbers are unequal.*

Whether sister's one-fourth is what is necessary for marriage.

25. Thus in cases of inequality in caste and numbers of brothers and sisters, the rule applies in all cases according to the interpretation of Medhatithi This is also the opinion of Vijnaneswara Yogee Bharuchi however says: 'by the word fourth share is meant as much property as is necessary for the ceremony of marriage. From it there is no right to inheritance of unmarried daughters' This also is the opinion of the author of the Chandrika. He says: "Therefore the taking of a share is not for the purpose of taking inheritance but for the purpose of the ceremony of marriage. Therefore Devala says: "To the daughters should be given paternal wealth, for the purpose of marriage" Whatsoever is reasonable should be accepted. In partition during father's life-time, whatever little the father gives that the maiden daughter gets, because there is no other special rules When there is no paternal wealth Narada says: "When there is no paternal property from their own shares, the brothers should themselves perform the ritual ceremonies, (of brothers and sisters) but in such cases curtailment of expenditure is intended."

The birth and other ritual ceremonies of brothers and sisters should be performed by those whose ceremonies have been performed, even when there is no paternal property, as an indispensable duty.

On marriage daughter should get some Stridhana in addition to ornaments.

At the partition of paternal property, the maiden daughter gets the ornaments given to her, as says Sankha: "On partition of heritage, the maiden daughter gets the ornaments." She also receives some Stridhana.

26. Yajnavalkya describes the character and order of succession of primary and secondary sons (cites Yajnavalkya, II, V, 131—135 and Manu, IX, V, 134).

* Next follow a discussion on the rights of sisters having mothers of different castes. It is omitted as unimportant.

The share of the adopted son when there is legitimate son.

27. Vasista mentions an exception: " If after adoption a legitimate son is born, the adopted son shall obtain a fourth part." Katyayana also says: " If a legitimate son be born, the rest are takers of a fourth share, provided they belong to the same caste, but if of a different caste, they are entitled to food and raiment only" Sons of the same caste are the Kshetraja, Dattaka and the like They get a fourth part share even when there is a legitimate son. (Sons) of different caste are the Kanina, the Gudhatpanna, the Sahodha and the Paunarbhava These latter when there is a legitimate son are entitled only to food and raiment and not to fourth share.*

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28. The adopted son and the like are not heirs of their natural father Manu says: " An adopted son shall never take the family name and the estate of his natural father. The funeral cake follows the family name and estate, the funeral offerings of him who gives his son in adoption cease as far as that son is concerned " By the mention of the Datrima, *i e*, the adopted son and other sons are included by analogy.

All sons except Dattaka and Aurasa not allowable.

29. The texts establishing the right to inherit of the subsidiary sons other than the Dattaka or the adopted son were applicable in past ages (and have no force now) because in another Smriti their being taken as sons is prohibited in the Kali Yuga · " The acceptance as sons of other than the Dattaka and Aurasa sons, the procreation of a son by Niyoga by the husband's younger brother and adopting the life of the Banaprastha in old age are prohibited by the wise."

Yajnavalkya mentions a special rule about the partition of a Sudra's heritage (Cites Yajnavalkya, II, V, 133-134).

Share of the son of the Sudra by a slave girl.

30. The son of Sudra by a slave girl gets a share at the option of the father After the death of the father, if there are sons by married wife, they should make the son by the slave girl taker of a half share When there no sons by married wife, or daughters or their sons, then the son of the slave girl takes the whole; when they exist, he takes a half share.

Sons of twice-born men by slave girls entitled to maintenance only.

The son by slave girls of the twice-born men cannot take any share, even at the desire of the son nor even the half share, from the qualification in the text "by a Sudra when a son is born of a slave girl" But when he is obedient, he only gets maintenance; that is the intention.

31. Yajnavalkya mentions the orders of succession to the estate of a sonless man.

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* Next follow a discussion of the rights of different obsolete kinds of sons which is omitted.

"The lawfully wedded wife and the daughters also, both parents, brothers likewise and their sons, gentiles, cognates, a pupil and a fellow-student, on failure of the first among them, the next in order is the heir to the estate of a sonless man who is dead. This rule extends to all classes." **Succession to the estate of the sonless man.**

32. He who has got none of the twelve kinds of sons beginning with the Aurasa, is meant by sonless. Of such a man when dead, the widow and the others on failure of the first, the next in order takes. This order of succession applies to all mixed castes and also to pure castes beginning with the Brahmin. This is the meaning **Widow's right.**

By widow is meant woman who had been married. She takes the inheritance of her husband first So says Vrihaspati: "Although kinsmen, father, mother and uterine brothers be living, the wife of the sonless person takes his wealth."

Vriddha Manu mentions a qualification of the rule: "A widow who has no male issue, who keeps the bed of her lord unsullied and who strictly performs the duties of duty of widowhood shall alone offer the cake at his obsequies and succeed to his entire share"

33 This is the order of succession to the estate of the sonless man. Of a deceased person having none of the twelve kinds of sons, the widow takes the estate, failing her, the daughter, failing her, the mother, failing her, the father, failing him, the brother, failing him, his son; failing him, the grandmother; failing her, the grandfather takes the estate and his son and son's son, failing the descendants of the grandfather, the great grandfather, his son and son's son take. Persons of the same Gotra up to the seventh degree take the inheritance. On failure of (these who are) Sapindas, Samanodakas take. The Samanodakas are seven persons above the Sapindas or as long as the common origin and the existence of a family name are known. That is mentioned by Vrihat Manu: "Sapinda relationship ceases with the seventh male; and the Samanodakaship ceases with the fourteenth; some say with the remembrance of birth and name. Beyond that it is called Gotra" On failure of persons of the same Gotra, (*i e*, Samanodakas), Bandhavas take the estate. Bandhavas are of thee kinds described by Baudhayana: **Order of succession.**

34. "The sons of his own father's sister, the sons of his own mother's sisters and the sons of his own maternal uncle are known as his own Bandhavas; the sons of his father's father's sister, the sons of his father's mother's sister and the sons of his father' maternal uncle are known as his father's Bandhus; the son of his mother's father's sister, the sons **Bandhus.**

of his mother's mother's sister and the sons of his mother's maternal uncle are known as his mother's Bandhus."

Preference among Bandhus is according to nearness.

35. Among Bandhus, he who is more nearly related takes before (one more remotely related). Therefore Vrihaspati says :

"When there are several relatives, agnates and cognates, whosoever is the nearest shall take the wealth of him who died leaving no issue."

Heirs who are not relations.

36. On failure of Bandhus, the spiritual teacher takes. On failure of the teacher, the disciple That is declared by Manu :

"Always to him who is nearest in point of Pinda, the estate shall belong, afterwards a Sakulya shall be the heir, then the spiritual teacher or the pupil "*

Apastamba also says · "On failure of the Sapinda, the spiritual teacher, on failure of the spiritual teacher, a pupil (shall take)" On failure of the pupil, a fellow student, on failure of the latter, any Srotriya (or learned Brahmana). That is declared by Gautama : "Srotriyas obtain the estate of a childless Brahmana."†

* * * *

In his default, any Brahmana (takes). So says Manu : "Of failure of all heirs, Brahmanas shall take the estate, who are versed in the three Vedas, pure and self-controlled ; thus the Law is not violated"

The estate of the Brahmana never goes to the King. But the estate of the Kshatriyas and the rest, on failure of all heirs up to the fellow-disciple, is taken by the King.

* * * *

Widow takes in case of separated unreunited coparceners.

37. It is objected that the estate of a childless man is always taken first by the widow is not established, because Narada has declared that even when there are widows, the brothers take and the widows only get maintenance : "If among several brothers, one childless should die or become a religious ascetic, the others shall divide his property, excepting the Stridhana. They shall make provision for his women till they die, in case they remain faithful to the bed of their husband. Should the women (not remain chaste), they must cut off that allowance." This is not correct.

* The translation is according to the reading of Madhava of Manu, 9, V, 187. It seems to be more consistent with Manu, 9, V, 186.

† Next follow texts showing that on failure of all heirs Brahmanas take.

(The text of Narada) if read as beginning with : "the property of reunited brothers belongs to them (all)," (and going on to say), "if among several brothers one childless should die, &c." only lays down that the childless widows of reunited brothers obtain only maintenance and the reunited brothers take the estate, because there would be no necessity for repetition in the text : "the property of reunited brothers belongs to them all So the share of the childless, it shall go to the rest (after death) of those who are childless" It may also refer to the case of unseparated brothers. Yajnavalkya's text however, applies to the case of the estate of a separated and not reunited person which is taken first by the widow. Thus there is no conflict.

38. (Let us consider) the text of Manu . "the father shall take the inheritance of one who has no male issue, or the brothers," and also the text of Katyayana : "if a man dies separate from his co-heirs, let his father take the property on failure of male issue ; or successively, the brother, or the mother or the father's mother" The text of Manu does not lay down the order of succession because it contemplates alternative cases by mentioning 'or' The text of Katyayana refers to the case when the widow is unchaste and the father and others take the estate of the childless man, for he also says : "The widow if not unchaste takes the wealth of the husband. If guilty of improper actions, shameless, extravagant or unchaste, the widow does not take the wealth." Wealth here means the share of fields set apart for her maintenance.

The position that widow takes for Niyoga refuted.

39. Dhareswara however, in respect of the rule that the estate of the childless man is taken by the widow, says it applies under certain circumstances. (He says that) the widow who wishes to raise issue by Niyoga gets the wealth of the separated co-parcener. Manu says : "He who takes the wealth or the wife of a deceased brother, having begotten a son for the said brother should give his wealth to him (the son). If the younger brother begets a son on the widow of the elder brother, there is equal division. This is the Law." When a separated brother is dead, his widow's connection with his estate is through his son. When the brother was joint the same rule applies. Gautama also says : "Sapindas Sagotras and relations descended from the same Rishi take the wealth ; or the widow. She may seek to raise issue."

The Sangrahakara says : "When brothers have separated and have not reunited, the widow takes the estate when she gets a son by Niyoga by the order of Gurus."

40. The above position is incorrect because in connection with the text (of Yajnavalkya), "the widow, daughters,

&c., take," Niyoga has never been heard. If it is said that though, it has not been so heard still it should be considered binding by virtue of the text of Gautama. This is not correct, because the texts of Gautama and others are capable of another meaning. To that effect is the text of Gautama: "Sapindas, Sagotras and relations descended from the same Rishi take the estate or the widow. She may seek to raise issue." The meaning of this is not that the widow takes the estate, if she seeks to raise issue. In that case, the Sapindas, Sagotras and descendants of the same Rishi would take and not the widow. The true meaning is that the widow may seek to raise issue or she may keep chaste. The word *Ba* (or) is used as an alternative and not in a contingent sense. The next opinion, "he who takes the wealth, &c.," declares only the heirship of the Kshetraja son and not of the widow. The text of Sankha also speaks of the heirship of the chaste widow and not of her who raises issue by the husband's younger brother and the like. Otherwise, the text (of Vriddha Manu): "a widow who has no male issue, who keeps the bed of her lord unsullied and who strictly performs the duties of widowhood, shall alone offer the Pinda and take the entire estate;" as well as (the text of Katyayana): "let the sonless widow preserving unsullied the bed of her lord and steadfast in her continence enjoy with moderation the property until her death. After her, let the heirs take it," would be in conflict. Therefore the decision that of the sonless separated unreunited deceased person his widow takes the estate, is correct. As regards the following text which (is supposed to) establish the disability of women to inherit: "wealth is made for sacrifices; those that are incompetent to perform them are not entitled to inherit property; they are only entitled to maintenance; wealth is for sacrifice; therefore it should go to a proper person and virtuous and not to a woman, ignorant man or an apostate;" it refers to wealth appropriated for sacrifices. Again the text of Katyayana: "heirless property goes to the king, deducting however a subsistence for the females and the funeral charges; but the goods of a learned Brahman (Srotriya), let him bestow on Srotriyas;" it only means that after deducting maintenance for females and Sraddha expenses, the estate of the heirless man goes to the king but the estate of the Srotriya after such deduction does not go to the king but to other Srotriyas. Narada says: "Unless it should be the property of a Brahmana, a king devoted to duty must allot a maintenance to his women. Thus has the law of inheritance been declared." Both (these texts of Narada and Katyayana) refer to unchaste wives confined in the house, from the use of the word Patni. The text of Harita: "a widow, who is

youthful, if she becomes untractable, should be given maintenance enough for preserving her life," also refers to wives whose unchastity is suspected. Again the text of Prajapati: "to the widow should be given *Adhaka* as maintenance till her death;" and also the text of another Smriti (Vrihaspati): "for her food (he must assign) a *prastha* of rice every ofternoon, together with fuel", these two texts are identical in meaning with the text of Harita. The text of the Veda: "therefore are women declared *Nirindriya* and *Adayada*," refers to the *Patnivata* sacrifice in which the sacrificer drinks the Soma juice in the vessel peculiar to that sacrifice, in which the wife has no share. The word *Indriya* means Soma as in the text "*Indriyam bai Shomapitha*"

Widow's right to immoveable property.

41 As regards the following text of Vrihaspati prohibiting the taking of immoveables by the widow: "the husband being separate, his wife shall take after his death a pledge and whatever else is recognised as property, excepting the immoveable wealth," it only declares her want of right to sell immoveable property without the permission of the other Dayadas (or co-heirs), otherwise there will be conflict with the text (of Vrihaspati): "after having received all the moveable add immoveable property, the gold, base metals and grain, liquids and wearing apparel, she should cause his monthly and annual Sraddhas to be performed. Let her propitiate with funeral oblations and pious liberality, her husband's paternal uncles, Gurus, daughter's sons, sister's sons and maternal uncles; and also aged or helpless persons, and guests."

Division after reunion proportionate to property united.

42. Manu (thus) declares the mode of partition among reunited co-parceners: "If brothers once divided and again living together make a second partition, the division in that case shall be equal; in such a case there is no preferential right of the eldest."

43. By declaring equal division, unequal division is prohibited By mentioning 'there is no preferential right of the eldest,' the prohibition of unequal division (in the aforesaid manner) shows that when co-parceners having unequal wealth reunite, the partition should be correspondingly unequal, according to the property of each.

Who can reunite.

Vrihaspati (thus) declares the persons with whom there can be reunion: "He who having been divided is again living through affection together with his father or brother or with his uncle even, is said to be reunited with them."

The son and the like, who having before separated from their father and the like, again through affection live

together with them, are called reunited. Living together with any one is the meaning.

Double share allowed in case of greater exertion, otherwise acquirer entitled to whole.

44. There may sometimes be unequal division among reunited co-parceners as is mentioned by Vrihaspati: "If among reunited co-parceners any one should acquire additional property through learning, valour and the like, a double share must be given to him; the rest shall take equal shares."

When greater wealth is acquired by learning and the like, then a double share should be given but not when the entire wealth is so acquired without the aid of the joint property.

Succession in case of reunion.

45. Yajnavalkya (thus) declares the heirs of the sonless reunited co-parcener: "A reunited brother shall deliver (to a son subsequently born) the share of his reunited brother or take it when he is dead, likewise the uterine brother (shall deliver or take) the share of his (deceased) uterine brother." The meaning is this: The share of a deceased reunited co-parcener when at partition the pregnancy of his wife was unknown and a son is afterwards born, the other reunited co-parcener shall give (to the son). When there is no son the reunited co-parcener shall take it and not the widow and other (heirs).

Right of widow and daughter.

46. The widows and unmarried daughters are only entitled to maintenance. So says Narada: "They shall make provision for his women till they die, in case they remain faithful to the bed of their husbanda. Should the women not (remain chaste), they must cut off that allowance. She who is his daught [illegible] father [illegible] sha[illegible] he[illegible] nance: she takes that share till her marriage. Afterwards the husband shall maintain her."

Succession in case of unreunited brothers.

47. 'The uterine brother's however the uterine brother' means that the uterine reunited brother shall give the share of his uterine reunited brother to his son afterborn. In default of such son, he himself will take it and not the half-brother. This is a qualification of the rule that the reunited co-parcener takes. When there are the reunited half-brother and the unreunited uterine brother, both shall take the estate as says (Yajnavalkya): "A half-brother reunited with the deceased may take the succession but not a half-brother not reunited, and the unreunited uterine brother also takes but not (the unreunited) brother born of a step-mother." The half-brother when reunited takes the estate of one born of a step-mother but not when unreunited. The unreunited uterine brother however, takes the estate of his uterine brother; and not the reunited step-brothers (only). Therefore Manu says: "If the eldest or the

youngest (brother) is deprived of his share or either of them dies after partition his share is not lost. His uterine brothers having assembled together shall equally divide it and those brothers who were reunited with him and also uterine sisters" This is the meaning Among reunited half-brothers if any one whether, eldest, youngest or middlemost is deprived of his share at partition because of his having gone to a different country and the like cause his share is not lost, *i e*, it should be set apart That is not taken by the reunited brothers alone. But that share is taken by the unreunited uterine brothers and the reunited half-brothers and the uterine sisters, who even if they had gone to a different country on returning should assemble together and divide equally. Others are of opinion: "The text '*Asansrsht ba*, &c.,' means that where there are reunited half-brothers and unreunited uterine brothers, the uterine brothers though not reunited take the estate and not the half-brothers though reunited. The text of Manu "if the eldest," &c., which declares the right to inherit of the reunited half-brother and of the reunited uterine brother, refers to the case when there are both moveable and immoveable properties Therefore Prajapati says: "concealable wealth goes to the reunited Land and house are taken by the unreunited in due share" The meaning of it is this: The concealed wealth or the movable property of the reunited goes to reunited half-brothers in due shares. Immovable property, such as house and field of the unreunited, is taken by the full-brothers in due shares. The text of Yajnavalkya refers to the case when only one kind of property movable or immovable exists." Here whatever is reasonable may be accepted.

Succession in default of reunited brother.

48. When there is no reunited half-brother, then the reunited father or uncle takes. To that effect Gautama says: "If a reunited co-parcener dies, his reunited co-parceners take the heritage" When there is neither reunited father or paternal uncle, the unreunited half-brother takes. In his default, the unreunited father; in his default, the mother; in his default, the widow. So says Sankha: "Of a deceased sonless person, the estate goes to his brother; in his default the parents take; in their default, the seniormost widow."

Widow succeeds to the share of her reunited husband on failure of parents and brother.

49. By the seniormost is meant chaste and not first married. Narada declares the rule of succession, when there are both reunited brother's sons and the widow: "On the death of the husband however, the widows, when there is no brother, father or mother, and all the Sapindas take their own wealth acoording to due shares." The widows of one having no brother, father and mother, (and) all the Sapindas, *i.e.*, brother's sons and the rest, (take). There brother's sons

take from their own father's share and the widows from their husband's share (and thus) the partition of the reunited property takes place. This is the meaning.

Sister succeeds to the estate of the reunited son on failure of parents and brother.

50. In default of wives, the share of the reunited son is taken by his sister, as Vrihaspati says: "She who is his sister is entitled to a share of his property. This is the law regarding the wealth of one destitute of issue and who has no wife or father" The particle *Cha* is used to mean that when there are no brother and mother also. Some however read: "She who is his daughter" (for sister) and say that on failure of wives the daughter takes

Succession of the nearest Sapinda.

51. On failure of daughter and sister, it is said that "always to that (Sapinda) who is nearest to the (deceased) Sapindas, the estate shall belong" (Manu 9, v. 187) and thus according to nearness of relationship the Sapindas and the rest take the inheritance. Therefore Vrihaspati say: "When a man dies, leaving no issue, nor wife, nor brother, nor father, nor mother, all his Sapindas take his property in due shares."

Succession to the estate ascetics, hermits and students.

52. Yajnavalkya says in reference to the question who takes the estate of hermits, ascetics and perpetual students: "The heirs to the property of a hermit, of an ascetic and of a student in theology are in order (that is in inverse order), the preceptor, a virtuous pupil and a spiritual brother belonging to the same hermitage."

Here in the inverse order the wealth of the perpetual students is taken by the preceptor and not by the father and others. The wealth of a temporary student is taken by father and others. The wealth of an ascetic is taken by a virtuous pupil, who is capable of hearing and understanding spiritual theology and of acting according to its directions. One who is of bad character cannot take the inheritance. The wealth of the hermit is taken by a spiritual brother belonging to the same hermitage. Spiritual brother means one having the same preceptor. *Ekatirtha* means belonging to the same hermitage. One, who is a spiritual brother and also belongs to the same hermitage, is meant.

Or, the estate of the hermit, the ascetic and the perpetual student is taken by the preceptor, the virtuous pupil and the spiritual brother belonging to the same hermitage, in order. The one first mentioned failing, the next in order takes, is the meaning.

What property ascetics can have of which there is partition.

53. As regards the text of Vasista: "but those who have entered a different order receive no shares," it only declares that one cannot take the estate of another who is in a differen order, and does not prohibit the mutual right of inheritance of persons of the same order. Now these persons have no connection with wealth, how then

there can be partition of their property as for them acquisition of wealth by acceptance and the rest is prohibited from the text of Gautama: "the Bhikshu can have no hoard of wealth"? Then also it is said: "Whatever saving of wealth he might make in six days, six months or in the year, he should give up in the month of Aswin." By this, the hermit can have no wealth. "The cloth for covering the loins the ascetic has and the accessories of his Yoga practices, and the Sandals also." From this text the ascetic may have clothes and books and the like necessary for preservation of the body and there is partition (in respect of them).

EXCLUSION FROM INHERITANCE.

54. Manu declares those that are excluded from inheritance: "Eunuchs and outcastes, born blind or deaf, the insane, idiots and the dumb as well as those deficient in any organ by disease" Narada also says: "One hostile to his father, outcaste, eunuch, or one who has committed a grave minor sin shall not take the inheritance, even if he is a legitimate son, much less so, if he is a Kshetraja son." Vasista also says: "But those who have entered a different order receive no shares." Yajnavalkya says: "An impotent person, an outcaste and his issue, one lame, a mad man, an idiot, a blind man and a person afflicted with an incurable disease as well as others (similarly disqualified), must be maintained being excluded from inheritance." 'His issue' means issue of the outcaste. By the word *Adi* (*i.e.*, as well as others) the dumb and the like are included.

Who are excluded from inheritance.

55. These are without shares, *i.e.*, are not entitled to the inheritance, and are only to be maintained with food and raiment. If they are not maintained, there is sin, says Manu: "But it is just that (a man) who knows (the law) should give even to all of them food and raiment according to ability, without stint (for life); he who does not give it becomes outcaste." 'Without stint' means for life.

Excluded heirs entitled to maintenance.

56. The outcaste has no right to be maintained, says Devala: "Food and raiment should be given to them excepting the outcaste." By the word 'outcaste' his issue also is indicated.

Outcaste and his son not entitled to maintenance.

57. Those who have entered another order also should be maintained. Therefore Vasista says: "Those who have entered a different order receive no share; nor eunuchs, mad men or outcastes. Eunuchs and mad men (have right to) maintenance."

Ascetics to be maintained

58. The sons of those who are excluded from inheritance, take shares. So says Devala: "The sons of such persons being free from similar defect shall obtain their father's share of the heritage." The legitimate and Kshetraja sons

Sons of excluded heirs take but not adopted sons.

of persons excluded from inheritance, take shares, if free from defects, such as impotence, but not sons adopted and others. Therefore Yajnavalkya says: "But their sons, legitimate or Kshetraja take shares if free from defects."

Daughters of excluded heirs to be married and chaste wives to be maintained.

59. The daughters of excluded heirs should till marriage be maintained and have all their ceremonies performed. Their virtuous wives also should be maintained as long as they live. Therefore he (Yajnavalkya) says: "Their daughters must be maintained likewise until they are made over to husbands. And their sonless wives, conducting themselves aright, must be supported, but such as are unchaste should be expelled and so indeed those who are perverse"

Sons of irregular marriages and connections excluded.

60. Other persons disqualified from taking shares are declared by Yajnavalkya: "Thus also the son of a woman married in an irregular order and one born of a wife of the same *Gotra*, as well as an apostate from a religious order are unworthy of the inheritance." Manu also says: "The son born of a widow not authorised to raise issue or of a widow with a son by her brother-in-law, both are illegitimate and born of lust and not entitled to shares."

STRIDHANA

Definition of Stridhana.

61. Yajnavalkya declares the law of partition of Stridhana: "What was given to a woman by the father, mother, husband or a brother, or received by her at the nuptial fire or presented to her on her husband's marriage to another wife, as also any other separate acquisition, is denominated Stridhana. That which was given to her by her kindred (Bandhu) as well as her fee or gratuity and any things bestowed after marriage, her kinsmen take, if she die without issue." 'Received at the nuptial fire' means whatever is given by maternal uncle and the like at the time of marriage before the fire, as says Katyayana: "That which is given to women at the time of marriage before the fire is denominated by the sages Stridhana received at the nuptial fire." Adhivedanikam means property given to a superseded wife for supersession.

Includes all acquired and inherited property.

62. By the word Adya or 'and also any other property' (in Yajnavalkya's text) is included within the definition of Stridhana property given to a woman while being carried from her father's house to her husband's house and property obtained by her by inheritance, purchase and the like.

63. So says Manu: "What (was given) before the (nuptial) fire, what was given on the bridal procession, what was given in token of love, and what was received from brother, mother or father, that is called the six-fold property of a woman." The word six-fold is used to show the least number and not for showing the greatest number.

Gift out of affection.

64. Katyayana describes the character of property given at the bridal procession and property given through affection thus: What a woman receives while she is carried from her paternal abode to the house of her husband is called the property given at the bridal procession. Whatever is given through affection by another or the father-in-law or for supersession is called 'gift through affection.'

Bandhudatta and Sulka defined.

65. Bandhudatta, or gift from kindred, means what is given by the kindred of the girl, like mother and father. Sulka or fee means the price by taking which a girl is given in marriage.

Anvadheya defined.

66. Anvadheyaka, or gift subsequent, is what is given after marriage. That is described by Katyayana: "Whatever is received as price (or bribe) by women (for sending their husbands to work) on houses, on furniture, or carriages, on milking utensils and on ornaments is called Sulka. Whatever is received by a woman after marriage from her husband's family and her father's family is called 'gift subsequent' (Anvadheyaka)."

Rule of limit of gift to a woman (Saudayika) does not bar permanent settlements for maintenance even of immovable property to any extent nor limits her power of disposal even of land.

67. A special circumstance is mentioned by Katyayana with reference to gifts to women by their parents and the like: "To a woman should be given Stridhana, according to their power by father, mother, husband, brother and kinsmen, up to two thousand *panas*, excepting immovables." Property excepting land, should be given according to one's power to the limit of two thousand *karsapanas* This rule applies to annual gifts. In gifts for many years or on a gift once for all for maintenance, this rule of limit of gift does not apply, nor is immoveable property excepted. So says Vrihaspati: "One should give sufficient wealth or a portion of the field which he wishes to give." Therefore even in immoveable property received out of affection as Saudayika a woman has power of disposal according to her desire. This is to declared by him (Vrihaspati) also: "By a married woman or by a maiden whatever is received from the husband's father's family or from the brother or from the parents is called Saudayika. The independence of women who have received Saudayika gifts is recognised in respect of such property, because it is given for their maintenance in order to avoid sin. Women have power to dispose of by sale or gift Saudayika property as they like."

No power of alienation in immovable property given by husband.

68. In respect of immovable property given by the husband a special rule is mentioned by Narada: "What has been given to a wife by her loving husband, that she may spend or give away as she likes, after his death even, excepting immovables."

69. Whatever is given by father and others for use on

particular occasions does not become Stridhana says Katyayana: "What is given to a woman for use on particular occasions or for a particular object by her father, brother or hsuband is not considered Stridhana." 'Given for use on particular occasions' means ornaments given for use on festive occasions. Yogabashen means by word (specifying the purpose) and the like.

Husband has right in wife's acquisition by mechanical arts or from strangers.

70. Property received by mechanical arts and the like does not become Stridhana, says he (Katyayana): "Whatever wealth is gained by mechanical arts and what is received through affection from a person other than the husband himself *i.e.*, a stranger, in that the ownership of the husband always exists; but all the rest is Stridhana." From another means from another person other than himself.

Rule of succession to Stridhana.

71. The Stridhana of a woman dying without daughter, daughter's son and son is taken by her Bandhavas, *i.e.*, the husband and others. There the following is the order of succession: On the mother dying, the daughter first takes. Therefore it is said by him (Yajnavalkya): "The daughters take the residue of their mother's property after payment of her debts. In their default, the male issue." Gautama also says: "Stridhana goes to unmarried daughters and (on failure of such) to unprovided daughters." In default of daughters, the daughter's daughters take for the text of Yajnavalkya says "if she leave progeny to her daughter's." When there are daughters by different mothers, their share is according to the share of their mothers. So says Gautama: "Shares are adjusted according to the father, mother and sister (descent from whom gives the inheritance)." When there are both daughters and daughter's daughters, Manu says: "Even to the daughters of those (daughters) something should be given according their deserts, out of the maternal grandmother's estate with affection."

Maiden daughter unprovided daughter, other daughters, daughter's daughter take in order.

After daughter's daughter, daughter's son takes

72. When there are no daughter's daughters, daughter's sons are heirs. So says Narada: "(And so shall) daughters (divide the property of their mother (when she dies) or failing daughter's, their issue." In default of daughters of daughter, their issue, *i.e.*, the daughter's son takes. This is the meaning.

After daughter's son, son takes.

73. On failure of daughter's sons, sons take the residue of the mother's estate after payment of her debts from the text of Yajnavalkya: "Sons divide equally the wealth and the debts (of their parents) after their death." As regards the text of Manu: "But when the mother has died, all the uterine brothers and the uterine sisters shall divide the mother's estate," it does not mean that daughters together take the mother's estate but

only declares that when they get the estate, they take equally, from the use of the word 'equally.' As regards the text of Sankha Likhita: "all the uterine brothers and sisters equally take the estate and unmarried sisters" it has the same meaning as the text of Manu (aforesaid). Or these two texts refer to Stridhana received from husband's family. On this matter Vrihaspati says: "Stridhana goes to the issue (male) and the daughter, if not betrothed, has a share in it; if she is married, she does not get the mother's estate." Issue here means male issue. As regards the text of Paraskara: "it is declared that Stridhana belongs to the unmarried daughter and the son does not take it. But if the daughter is married, the son gets equal share with her:" This refers to the unprovided barren daughter.

Or son and maiden or unprovided daughter take equally property received from husband's family.

74. Therefore Manu says: "But whatever may be the Yautaka of the mother, that is the share of the unmarried daughter alone" Yautaka means property received from the father's family. The estate of the childless woman of a lower caste, is taken by the daughter of her co-wife of superior caste, and failing her by the son (of such co-wife). That is declared by Manu: "Whatever property may have been given by her father to a wife (of one who has co-wives of different castes) that the daughter of the Brahmini wife shall take or that daughter's issue." The word Brahmini is used to indicate comparative superiority of caste

Yautaka or gift from father's family taken by maiden daughter.

75. On failure of sons, son's sons take. Grandsons also have to pay the grandmother's debts from the text "debts have to be paid by sons and grandsons" and thus is declared their right Granted that they have the right to pay the debts but whence is their right to take the estate, says the objector. The objection is not well-founded. From the text of Gautama: "those that take the inheritance pay the debts:" only those that take the inheritance have the right to pay the debts.

After sons, grandsons take.

76. On failure of grandsons, husband and others take. Here Manu declares different rules in different kinds of marriage: "It is ordained that the property of a woman married according to the Brahma, the Daiva, the Arsha, the Gandharva or the Prajapatya rites, shall belong to her husband alone, if she dies without issue. But it is prescribed that the property given to a wife married according to Asura and other blamable rites shall go to her mother and father, if she dies childless."

After grandson, husband takes in approved forms of marriage and parents take in blamable forms.

77. The estate of a wife married in Brahma, Daiva, Gandharva and Prajapatya forms on failure of her heirs beginning with the daughter and ending with the son's son goes to her husband and not to her mother and others. The estate of a wife married according to Asura, Rakshasa and Paisacha

goes to her mother and father. As regards the text of Katyayana: "What is given by Bandhus goes to the husband, on failure of the Bandhus," it is applicable to the case of the woman married in forms Asura and the rest. Therefore he (Katyayana) has said: "Whatever is received from the father as Stridhana by a woman married in the forms Asura and the rest, belongs to mother and father on failure of issue."

78. The Stridhana called Sulka given by the husband and the like, the uterine brother takes. So says Gautama: "the sisters fee belongs on the death of her uterine brothers to her mother." On failure of uterine brothers it belongs to the mother. Again when he (Gautama) says: "the Sulka given by himself, the husband takes," that is applicable to the case when the girl dies after receiving Sulka but before marriage. Therefore Yajnavalkya says: "If she die (after being affianced) he (the bridegroom) shall receive back what he has given deduction being made for expenditure on both sides."

Succession to maiden's Stridhana.

79 Whatever ornaments &c, have been given to a maiden by her maternal grandfather and the like, those also are taken by uterine brothers To that effect says Baudhayana: "The heritage of a deceased maiden, her uterine brothers shall take equally In their default the mother takes; in her default the father" The estate of the childless Putrika is taken by her uterine brothers, as says Paithinashi: "The estate of a Putrika is not taken by the husband. If a maiden dies sonless her estate is taken by her brothers.

80. When there is a legitimate son born to the father after a girl has been made Putrika, he takes her wealth and not her husband. As regards the text of Manu: "But if an appointed daughter by accident dies without leaving a son, her husband may take her estate without hesitation," it is applicable to the case when there is no afterborn brother.

Sister's so &c., take in default of husband.

81 The Stridhana of childless women is sometimes taken by sisters' sons and the like; that is declared by Vrihaspati: "The mothers sister, the wife of a maternal uncle, a paternal uncle's wife, a father's sister, a mother-in-law and an elder brothers wife are declared to be equal to a mother. If they have no legitimate son nor other son, nor daughter son, nor their son, their sister's son &c, shall inherit the property." The meaning of it is this: The Stridhana of these women, who are married in Brahma and other approved forms, when they leave no husband, and of those who are married in Asura and other reprehensible forms, when they have no mother or father is taken by the heirs beginning with the sister's son in order.

82. Sometimes the husband may take the wealth of the

wife in her lifetime, as says Yajnavalkya: "A husband is not liable to make good the property of his wife taken by him in a famine, for the performance of religious duties during illness or while under restraint" 'While under restraint' means while imprisoned, and in similar circumstances, the husband having taken the property of the wife need not return it to her. But if he takes under circumstances other than those mentioned, he must return it. So says Katyayana: "Neither the husband, nor the son, nor the father nor brothers can assume power over a woman's property to take it or bestow it. If any of these persons by force consume the woman's property, he shall be compelled to make it good with interest and shall be punished. If with her permission with affection such property is enjoyed, the principal should be returned, if he is rich." Devala also says: "Property given for her maintenance, ornaments, property given to the bride by the husband for marriage and wealth gained from kinsmen are declared Stridhana. She herself exclusively enjoy it, her husband has no right to use it, except in distress."*

SELF-ACQUIRED PROPERTY.

What self-acquisitions are not liable to partition.

83. Yajnavalkya describes indivisible property: "What has been self-acquired by one, as an increment without diminishing the parental estate, likewise a gift from a friend or a marriage gift does not belong to the co-heirs. He who recovers ancestral property which had been lost need not divide it with the co-heirs nor property acquired by learning."

84. Whatever has been acquired without help of the paternal wealth by agriculture and the like, what has been acquired by learning, &c., and the like, and what is gained in marriage, need not be divided with brother and other coparceners.

Acquirer's one-fourth share in recovered ancestral property

85. If one recovers with the consent of others an ancestral property which had been lost by theft or the like, that property becomes his alone. As regards fields, the recoverer gets one-fourth and the remainder is equally divided. So says Sankha: "When ancestral land which had been lost is recovered by one, the rest may divide according to their shares after giving him a fourth part."

86. Similarly property acquired by learning, *i.e.*, by study, &c., belongs exclusively to the acquirer.

* Next follow a description of what is divisible property which is omitted as unimportant and is practically a repetition of what is found in the Mitakshara.

87. *In all these rules about self-acquisition being exclusive property of the acquirer, acquired without help of the father's property, should be understood.* Therefore Manu says: "What one acquires by his labour without using the patrimony, and also what one acquires by learning, he need not share with the co-heirs." By labour means by agriculture and the like. Without using the patrimony is said to indicate jointness. Vyasa also says: "Whatever is gained by science and wealth acquired by valour and the affectionate gifts from kindred to woman, shall not be claimed by the co-sharers."

Katyayana describes the character of indivisible gains of science † * *

Brother maintaining family entitled to share gains of learning even without help of ancestral property.

88. Property other than gains of science described above, acquired without using the patrimony, is common property of undivided coparceners.

89. Sometimes gains of science may be divisible, says Narada: "When one brother maintains the family of another brother, who is engaged in studying science, he shall receive a share of that wealth though he be ignorant himself."

What gains of science are divisible.

90. Katyayana says: "Of brothers such as have received education in the family or from the father, the property gained by superior exertion is divisible according to Vrihaspati." In an undivided property, when the wealth is acquired by those educated by the uncle or the father by superior exertion, *i.e.*, by learning, such wealth which is gains of science may be divided.

Acquirer has double share.

91. Vasista declares that in property acquired with help of the paternal property, the acquirer has a double share: "Whatever is acquired by one, he gets a double share of it."

92. As regards the text (of Yajnavalkya): "If however the common property is augmented equal division is enjoined," that refers to acquisitions by means of agriculture and the like other than learning.

93. In indivisible gains of learning, share may be given to other coparcener at the will of the acquirer as says Gautama: "What a learned coparcener has acquired by his own efforts, he may at his pleasure participate with his learned coparceners." When there is no such desire, Narada says: "A learned man is not bound to give a share of his own acquired wealth against his will to an unlearned co-heir, unless it has been gained by using the paternal wealth." He should not give to the unlearned even if

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† The translations of the texts of Katyayana on this matter are to be found at Vol. I, p. 620 and also in the Vivada Ratnakara, Aparārka and other commentaries and it is not necessary to repeat them here.

he so desires. So says Katyayana: "Never shall a learned man give wealth acquired by learning to the unlearned but to those who are equal or superior in learning should such wealth be given by the learned."

94. Like wealth acquired by learning, wealth acquired by valour is indivisible, as he (Katyayana) says: "Whatever is acquired by valour or by learning and Stridhana: all these on partition are not divisible by the coparceners (but belong to the acquirer) Whatever is acquired in war under a standard is also not divisible" 'Acquired under a standard' is thus defined by him (Katyayana): "What is seized in war after risking his life for his master and routing the forces of the enemy is called spoil taken under a standard"

Gains of valour indivisible.

95 Vrihaspati also says: "What is given by the grandfather or the father or by the mother, as well as property acquired by valour and wealth of the wife, cannot be taken away from him by the coparceners" The wealth acquired by valour is thus describe by Katyayana. "When a (soldier) performs a gallant action and favour is shown to him by his master pleased with that action, whatever property is thus received by him shall be considered as gains of valour."

Gift of parents indivisible.

96 In wealth acquired by valour by one supported by paternal wealth, like wealth acquired by learning under such circumstances, the acquirer has a double share as declared by Vyasa: "When property is acquired by valour and the like with the aid of common property such as a conveyance or a weapon, therein the brothers are sharers: to him (the acquirer) two shares are to be given, the rest are equal sharers."

Acquirer has double share in property gained by valour as by learning with the help of ancestral property.

* * * (The description of various kinds of indivisible property is omitted as unimportant. All the texts cited are to be found in the Mitakshara and Vol. I, ch. IV).

पराशरमाधवः।

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अथ दायभागाख्यं व्यवहारपदं कथ्यते।

तत्र नारदः,—

"विभागोऽर्थस्य पित्र्यस्य पुत्रैर्यत्र प्रकल्प्यते।

दायभाग इति प्रोक्तं व्यवहारपदं बुधैः"—इति।

दायोनाम, यद्धनं स्वामिसम्बन्धादेवान्यस्य स्वम्भवति, तदुच्यते। स द्विविधः अप्रतिबन्धः सप्रतिबन्धश्चेति। पितृधनं पितामहधनं वा अप्रतिबन्धो दायः। पुत्रादिधनं तु पित्रादीनां सप्रतिबन्धो दायः। तस्य विभागोदायविभाग इत्युच्यते। अतएव दायशब्देन पितृद्वाराऽऽगतं मातृद्वाराऽऽगतं च द्रव्यमेवोच्यते इति। सङ्ग्रहकारश्च,—

"पितृद्वाराऽऽगतं द्रव्यं मातृद्वाराऽऽगतञ्च यत्।

कथितं दायशब्देन तस्य भागोऽधुनोच्यते"—इति।

विभागकालमाह मनुः,—

"ऊर्ध्वं पितुश्च मातुश्च समेत्य भ्रातरः सह।

भजेरन् पैतृकं ऋक्थं अनीशास्ते हि जीवतोः"—इति।

ऊर्ध्वं पितुरिति पितृधनविभागकालः। मातुरूर्ध्वमिति मातृधनविभागकालः। ततश्चैतदुक्तं भवति। पितुरूर्ध्वं मातरि जीवन्त्यामपि पितृधनविभागः कार्य्यः। तथा मातुरूर्ध्वं पितरि जीवत्यपि मातृधनविभागः कार्य्यएव। अन्यतरधनविभागे उभयोरूर्ध्वंकालप्रतीक्षणानुपयोगादिति। तदुक्तं संग्रहकारेण,—

"पितृद्रव्यविभागस्य जीवन्त्यामपि मातरि।

अस्वतन्त्रतयाऽऽस्वाम्यं यस्मान्मातुः पतिं विना॥

मातृद्रव्यविभागोऽपि तथा पितरि जीवति।

सत्स्वपत्येषु यस्मान्न स्त्रीधनस्य पतिः पतिः"—इति।

अयमर्थः। पतिमरणे पितृभार्य्यायाः पत्युपरमादस्वातन्त्र्येण न स्वामित्वं, यस्मात्त्वपत्येषु विद्यमानेषु भार्य्याधनस्य भार्य्यामरणेऽपि पतिर्न स्वामी, तस्मात्तयोरन्यतरस्मिन् जीवत्यप्यन्यतरधनविभागोयुक्तः—इति। एतेन जीवतोस्तत्तद्द्रव्यविभागेषु पुत्राणां न स्वातन्त्र्यमित्यर्थादुक्तं भवति। तथा शङ्खः। "न जीवति पितरि पुत्रा रिक्थं भजेरन्। यद्यपि स्यात् पश्चादधिगतं, ते अनर्हाएव पुत्राः। अर्थधर्म्मयोः अस्वातन्त्र्यात्"—इति। अस्यार्थः। यद्यपि जन्मानन्तरमेव पुत्राः पितृधननिमित्तं प्रतिपन्नाः, तथापि पितरि जीवति तद्धनं न विभजेरन्। यतो धर्मार्थयोरस्वातन्त्र्याद्विभागकरणेऽनर्हाः। अर्थास्वातन्त्र्यं नाम, तदादानप्रदानयोरस्वातन्त्र्यम्—इति। तथाच हारीतः। "जीवति पितरि पुत्राणां अर्थादानविसर्गाक्षेपेष्वस्वातन्त्र्यम्"—इति। अर्थादानमर्थोपभोगः। विसर्गोव्ययः। आक्षेपोभृत्यादेः शिक्षार्थमधिक्षेपादिः। धर्मास्वातन्त्र्यं, पृथगिष्टापूर्त्तादावप्रवृत्तिः। यत्तु देवलेनोक्तम्,—

"पितर्युपरते तत्र विभजेरन् पितुर्धनम्।
अस्वाम्यं हि भवेत्तेषां निर्दोषे पितरि स्थिते"—इति।

तदप्यस्वातन्त्र्यप्रतिपादनपरं। पितृधने पुत्राणां जन्मना स्वाम्यस्य लोकसिद्धत्वात्। ननु शास्त्रैकसमधिगम्यस्य स्वत्वस्य कथं लोकसिद्धता। शास्त्रसिद्धत्वञ्च, "स्वामी रिक्थक्रयसंविभागपरिग्रहाधिगमेषु। ब्राह्मणस्याधिकं लब्धं क्षत्रियस्य विजितं निर्विष्टं वैश्यशूद्रयोः"—इति गौतमवचनादवगम्यते। अप्रतिबन्धोदायो रिक्थं, न सप्रतिबन्धोदायः। संविभागोऽप्रतिबन्धोदायः। अनन्यपूर्वस्य जलतृणकाष्ठादेः स्वीकारः परिग्रहः। निध्यादिप्राप्तिरधिगमः। एतेषु निमित्तेषु सत्सु स्वामी भवति। ब्राह्मणस्य प्रतिग्रहादिना यल्लब्धं, तदधिकमसाधारणम्। क्षत्रियस्य विजयदण्डादिलब्धं यत्तदसाधारणम्। वैश्यस्य कृषिगोरक्षादिलब्धं निर्विष्टं, तदसाधारणम्। शूद्रस्य द्विजशुश्रूषादिना भृतिरूपेण यल्लब्धं, तदसाधारणम्। एवमनुलोमप्रतिलोमजानां स्वस्वविहिताश्वसारथ्यादिना यल्लब्धं तदधिकमित्यर्थः। तत्रैव संग्रहकारोन्यायमाह,—

"वर्त्तते यस्य यद्धस्ते तस्य स्वामी सएव न"—इति।

अन्यस्वस्यान्यहस्ते स्थितस्य दर्शनेन तस्यैव स्वामित्वापत्तेः। अतः शास्त्रैकसमधिगम्यं स्वत्वम्। किञ्च, यदि यद्यान्तिके यद्धनं दृष्टं तस्य सएव स्वामी, तर्ह्यस्य स्वमनेनापहृतमिति न ब्रूयात्। यस्यैवान्तिके दृष्टं तस्यैव स्वामित्वात्। स्वत्वस्य लौकिकत्वे,

"योऽदत्तादायिनोहस्ताल्लिप्सेत ब्राह्मणो धनम्।
याजनाध्यापनेनापि यथा स्तेनस्तथैव सः"—इति।

याजनादिना अदत्तादायिनः सकाशाद्द्रव्यमर्जयतो दण्डविधानमनुपपन्नं स्यात्। तस्माच्छास्त्रैकसमधिगम्यं स्वत्वम्।

नैवम्। लौकिकमेव स्वत्वं लौकिकार्थक्रियासाधनत्वात्। व्रीह्यादिवत्। आहवनीयादीनां वैदिकादीनामपि लौकिकपाकादिसाधनत्वमस्तीत्यनैकान्तिको हेतुः— इति चेत्। न। न हि तेषामाहवनीयादिरूपेण पाकादिसाधनत्वं, किं तर्हि लौकिकाग्न्यादिरूपेणेत्यस्ति वैषम्यम्। किञ्च, पामराणामपि स्वत्वव्यवहारदर्शनात् स्वत्वस्य लौकिकत्वमवगम्यते।

यत्तु गौतमवचनम्। "स्वामी रिक्थक्रयसंविभागेषु"—इत्याद्यनुपपन्नमित्युक्तम्। तन्न। प्रतिग्रहाद्युपायनियमार्थत्वात् शास्त्रस्य। यदप्युक्तं, अन्यस्य स्वमन्येनापहृतम्—इति न ब्रूयादिति। तदसत्। स्वत्वहेतुभूतक्रयादिसन्देहात् स्वत्वसन्देहोपपत्तेः। यदपि चोक्तं, "योऽदत्तादायिनः"—इति अदत्तादायिनः सकाशात् याजनादिना द्रव्यमर्जयितुर्दण्डविधानमनुपपन्नमिति। तदप्यसत्। प्रतिग्रहादिनियतोपायकस्यैव स्वत्वस्य लौकिकत्वात् नियमातिक्रमेण द्रव्यमर्जयतो दण्डविधानमुपपद्यते। एवं, "तस्योत्सर्गेण शुध्यन्ति"—इति प्रायश्चित्तविधानमपि। एवं च स्वत्वस्य लौकिकत्वे असत्प्रतिग्रहादिलब्धं धनं तत्पुत्रादीनां दायत्वेन स्वमिति विभाज्यम्। न तेषां दोषसम्बन्धश्च।

"सप्त वित्तागमा धर्म्या दायो लाभः क्रयो जयः।
प्रयोगः कर्मयोगश्च सत्प्रतिग्रह एव च"—इति

मनुस्मरणात्।

इदमत्र चिन्तनीयम्। विभागात् स्वं स्वस्य वा विभागः—इति। अत्रायं पूर्वपक्षः। विभागात् स्वं, जन्मनैव स्वत्वे उत्पन्नमात्रस्य पुत्रस्यापि स्वं साधारणमिति द्रव्यसाध्येष्वाधानादिषु पितुरधिकारविधिर्न स्यात्। किञ्च,

"भर्त्रा प्रीतेन यद्दत्तं स्त्रियै तस्मिन्मृतेऽपि तत्।
सा यथाकाममश्नीयाद्दद्याद्वा स्थावरादृते"—इति

प्रीतिदानवचनमप्यनुपपन्नं स्यात्। यदपि,—

"मणिमुक्ताप्रवालानां सर्वस्यैव पिता प्रभुः।
स्थावरस्य तु सर्वस्य न पिता न पितामहः॥
पितृप्रसादात् भुज्यन्ते वस्त्राण्याभरणानि च।
स्थावरं तु न भुज्येत् प्रसादे सति पैतृके"—इति।

तत्पितामहोपात्तस्थावरविषयम्। तस्मात्, स्वामिनाशाद्विभागाद्वा स्वत्वं न जन्मनैव।

शास्त्रान्तरम्। जन्मनैव स्वत्वं लोके प्रसिद्धम्। विभागशब्दश्च बहुस्वामिकधन-विषये लोके प्रसिद्धो नान्यदीयधनविषयो न प्रहीण विषयः। किञ्च "उत्पत्त्यैवार्थे स्वामित्वाल्लभेतेत्याचार्य्याः"—इति गौतमवचनाज्जन्मनैव स्वत्वमवगम्यते।

यदुक्तम्, मणिमुक्ताप्रवालानाम्,—इत्यादिवच पितामहोपात्तस्थावरविषयमिति। तदयुक्तम्। न पि न पितामह इति वचनात् पितामहस्य हि स्वार्जितमपि धनं पुत्रपौत्रयोः सतोरदेयमिति च जन्मना स्वत्वगमयतीति।

यदप्युक्तम्। अर्थसाध्येष्वाधानादिषु पितुरनधिकार इति। तदयुक्तम्। वचनादेवाधिकारावगमात्। यदपि चोक्तं, जन्मनैव स्वत्वे भर्त्रा प्रीतेन यद्दत्तमित्यादि विष्णुवचनं नोपपद्यते,—इति। तदप्ययुक्तम्। साधारणेऽपि द्रव्यस्य वचनादेव प्रीतिदाने पितुरधिकारोपपत्तेः। स्थावरादौ तु स्वार्जितेऽपि पुत्रादिपारतन्त्र्यमेव।

"स्थावरं द्विपदञ्चैव यद्यपि स्वयमर्जितम्।
असम्भूय सुतान् सर्वान्न दानं न च विक्रयः॥
ये जाता येऽप्यजाताश्च ये च गर्भे व्यवस्थिताः।
वृत्तिञ्च तेऽभिकाङ्क्षन्ति न दानं न च विक्रयः"—

इत्यादिवचनात्। आपदादौ तु स्वातन्त्र्यमस्त्येव।

"एकोऽपि स्थावरे कुर्य्याद्दानाधमनविक्रयम्।
आपत्काले कुटुम्बार्थे धर्मार्थेषु विशेषतः"—इति

स्मरणात्। तस्मात्, सुष्ठूक्तं जन्मनैव स्वत्वमिति। प्रकृतमनुसरामः। अपरमपि विभागकालमाह याज्ञवल्क्यः,—

"विभागञ्चेत्पिता कुर्य्यादिच्छया विभजेत्सुतान्।
ज्येष्ठं वा श्रेष्ठभागेन सर्वे वा स्युः समांशिनः"—इति।

यदा पिता विभागं कर्तुमिच्छति, तदा पुत्रानात्मनः सकाशादिच्छया विभजेत्। इच्छया विभागप्रकार, ज्येष्ठं वा श्रेष्ठभागेनेति। श्रेष्ठभागः सोद्धारविभागः। उद्धारप्रकारः स्मृत्यन्तरे दर्शितः,—

"ज्येष्ठस्य विंश उद्धारः सर्वद्रव्याच्च यद्वरम्।
ततोऽर्धं मध्यमस्य स्यात्तुरीयं तु यवीयसः"—इति।

अथवा। सर्वे ज्येष्ठादयः पुत्राः समांशभाजः। अयञ्च विषमोभागः स्वार्जित-द्रव्यविषयः। क्रमागते तु सर्वेषामपि समांशः स्यात्। पितुरिच्छया विषम-विभागस्यायुक्तत्वात्। नारदोऽपि कालान्तरमाह,—

"अत ऊर्ध्वं पितुः पुत्रा विभजेयुर्धनं समम् ।
मातुर्निवृत्ते रजसि प्रत्तासु भगिनीषु च ॥
निवृत्ते वाऽपि रमणे पितर्युपरतस्पृहे"—इति ।

शङ्खोऽपि । "अकामे पितरि रिक्थविभागो वृद्धे विपरीते चेतसि दीर्घरोगिणि च"—इति । अस्यार्थः । अकामे विभागमनिच्छति पितरि अतिवृद्धे विपरीतेऽप्रकृतिस्थे दीर्घरोगिणि अचिकित्स्यरोगग्रस्ते च पुत्राणामिच्छयैव विभागो भवतीत्यर्थः । दीर्घरोगग्रहणमतिकुपितादेरुपलक्षणम् । अतएव नारदः,—

"व्याधितः कुपितश्चैव विषयासक्तमानसः ।
अयथाशास्त्रकारी च न विभागे पिता प्रभुः"—इति ।

पित्रा समविभागकरणे विशेषमाह याज्ञवल्क्यः,—

"यदि कुर्यात्समानंशान् पत्न्यः कार्याः समांशिकाः ।
न दत्तं स्त्रीधनं यासां भर्त्रा वा श्वशुरेण वा"—इति ।

यदि स्वेच्छया पिता पुत्रान् समभागिनः करोति, तदा अदत्तस्त्रीधनाः पत्न्योऽपि पुत्रसमांशभाजः कार्याः । दत्ते तु स्त्रीधने, "दत्ते त्वर्द्धं प्रकल्पयेत्"—इति पुत्रांशादर्द्धांशभाजो भवन्ति । पितुरूर्ध्वं धर्मवृद्ध्यर्थं विभागः कर्त्तव्य इत्याह प्रजापतिः,—

"एवं सह वसेयुर्वा पृथग्वा धर्मकाम्यया ।
पृथग्विवर्धते धर्मस्तस्माद्धर्म्या पृथक्क्रिया"—इति ।

बृहस्पतिरपि,—

"एकपाकेन वसतां पितृदेवद्विजार्चनम् ।
एकं भवेद्विभक्तानां तदेव स्याद् गृहे गृहे"—इति ।

पित्रोरूर्ध्वं विभागे प्रकारनियममाह याज्ञवल्क्यः,—

"विभजेयुः सुताः पित्रोरूर्ध्वं रिक्थमृणं समम्"—इति ।

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जीवद्विभागेऽपि विषमविभागो नारदेनोक्तः,—

"पितैव वा स्वयं पुत्रान् विभजेद्वयसि स्थितः ।
ज्येष्ठं श्रेष्ठविभागेन यथा वाऽस्य मतिर्भवेत् ॥
पित्रैव तु विभक्ता ये समन्यूनाधिकैर्धनैः ।
तेषां स एव धर्म्यः स्यात् सर्वस्य हि पिता प्रभुः ॥
दायं यो प्रतिपद्येत विभजन्नात्मनः पिता"—इति ।

बृहस्पतिरपि,—

"समन्यूनाधिका भागाः पित्रा येषां प्रकल्पिताः ।
तथैव ते पालनीया विनेयास्ते स्युरन्यथा"—इति ।

तस्माज्जीवद्विभागेन च विषमविभागोऽस्तीति कथं सुताः सममेव विभजेरन्निति नियम्यते । नैवम् । सत्यं शास्त्रतो विषमविभागोऽस्ति, तथापि लोकविद्विष्टत्वाद्नुबन्ध्यादिवत् नानुष्ठीयते । उक्तञ्च संग्रहकारेण,—

'यथा नियोगधर्मोऽयं नानुबन्ध्यावधोऽपि वा ।
तथोद्धारविभागोऽपि नैव सम्प्रति वर्त्तते"—इति ।

आपस्तम्बोऽपि । "जीवन्नेव पुत्रेभ्यो दायं विभजेत् समम्"—इति सममनुपन्यस्य "ज्येष्ठो दायाद इत्येके"—इत्येकीयमतेन कृत्स्नधनग्रहणं ज्येष्ठस्योपन्यस्य, देशविशेषे, "सुवर्णं कृष्णा गावः कृष्णं भौमं ज्येष्ठस्य रथः पितुः परिभाण्डञ्च, गृहेऽलङ्कारो भार्य्याया ज्ञातिधनं चेत्येके"—इत्येकीयमतेनैवोद्धारविभागं दर्शयित्वा "तच्छास्त्रप्रतिषिद्धम्"—इति निराकृतवान् । तच्च शास्त्रप्रतिषेधं स्वयमेव दर्शितवान्, "मनुः पुत्रेभ्यो दायं व्यभजदित्यविशेषेण श्रूयते"—इति । तस्माद्विषमविभागः शास्त्रसिद्धोऽपि लोकविरोधाच्छ्रुतिविरोधाच्च नानुष्ठेयः,—इति सममेव विभजेरन्निति नियमो घटते ।

स्वयं द्रव्यार्ज्जनसमर्थतया पितृद्रव्यमनिच्छतोऽपि यत्किञ्चिद्दत्त्वा दायविभागः कर्त्तव्यः तत्पुत्रादीनां दायग्रहणेच्छानिवृत्त्यर्थमित्याह याज्ञवल्क्यः,—

"शक्तस्यानीहमानस्य किञ्चिद्दत्त्वा पृथक् क्रिया"—इति ।

पुत्राणां मातृधनविभागो दुहित्रभावे द्रष्टव्यः । तथाच स एव,—

"मातुर्दुहितरः शेषमृणात्ताभ्य ऋतेऽन्वयः"—इति ।

मातृकृतर्णापाकरणावशिष्टं मातृधनं दुहितरो विभजेरन् । अतश्च, मातृकृतर्णसमं न्यूनं च मातृधनं दुहितृणां सद्भावेऽपि पुत्रा एव विभजेरन्,—इत्यर्थादवगम्यते । अत्र गौतमेन विशेषो दर्शितः । "स्त्रीधनं दुहितॄणामप्रत्तानामप्रतिष्ठितानां च"—इति । ऊढाऽनूढदुहितृसमवाये मातृधनमनूढानामेव । ऊढास्वपि सधननिर्धनदुहितृसमवाये निर्धनानामेवेत्यर्थः । पैतामहे पौत्राणां विभागे विशेषमाह याज्ञवल्क्यः,—

"अनेकपितृकाणान्तु पितृतो दायकल्पना"—इति ।

यदा पितृतः अविभक्ता भ्रातरः पुत्रानुत्पाद्य मृताः, तत्रैकस्य द्वौ पुत्रौ, अन्यस्य त्रयः, अपरस्य चत्वारः । तत्र पौत्राणां पैतामहे द्रव्ये यद्यपि जन्मनैव स्वत्वं

पुत्रैरविशिष्टं, तथापि पितरं द्वावेकं त्रयोऽप्येकं चत्वारोऽप्येकं लभन्ते इत्यर्थः। एतदेवाभिप्रेत्य वृहस्पतिः,—

"तत्पुत्रा विषमसमाः पितृभागहराः स्मृताः"—इति।

तत्पुत्राः प्रमीतपितृकाणामेकैकस्य पुत्राः, विषमसमाः न्यूनाधिकसङ्ख्याः, स्वं स्वं पैतृकं भागमेव लभन्ते इत्यर्थः। यदा स्वसुतयोरविभक्तयोर्मध्ये कश्चित् भ्राता मृतः तत्सुतस्तु पितामहादप्राप्तांशः पितामहोऽपि नासीत्, तदा त्वाह कात्यायनः,

"अविभक्तोऽनुजे प्रेते तत्सुतं रिक्थभागिनम्।
कुर्वीत जीवनं येन लब्धं नैव पितामहात्॥
लभेतांशं स पित्र्यं तु पितृव्यात्तस्य वा सुतात्।
सएवांशस्तु सर्वेषां भ्रातॄणां न्यायतो भवेत्॥
लभेत् तत्सुतो वाऽपि निवृत्तिः परतो भवेत्"—इति।

लभेत तत्सुतो वा,—इत्यस्य अयमर्थः। तस्यापि विभाज्यधनस्वामिपौत्रस्य सुतोऽपि पितुरभावे तद्भागं लभेत्, तत ऊर्द्ध्वं तत्सन्ततौ वृद्धप्रपितामहधनविभाग-करणनिवृत्तिः,—इति। तथाच देवलः,—

"अविभक्तविभक्तानां कुल्यानां वसतां सह।
भूयो दायविभागः स्यादा चतुर्थादिति स्थितिः।
तावत् कुल्याः सपिण्डाः स्युः पिण्डभेदस्ततः परम्"—इति।

जीवत्पितृकस्य पुनः पित्रा सह कथं पितामहधनविभागइत्याकाङ्क्षायामाह वृहस्पतिः,—

"द्रव्ये पितामहोपात्ते जङ्गमे स्थावरेऽपि वा।
सममंशित्वमाख्यातं पितुः पुत्रस्य चैव हि"—इति।

याज्ञवल्क्योऽपि,—

भूर्य्या पितामहोपात्ता निबन्धो द्रव्यमेव वा।
तत्र स्यात् सदृशं स्वाम्यं पितुः पुत्रस्य चोभयोः"—इति।

भूः शालिक्षेत्रादिका। निबन्धः; एकस्य पर्णभारस्य इयन्ति पर्णानि, तथैकस्य क्रमुकभारस्य इयन्ति क्रमुकफलानीत्याद्युक्तलक्षणः। द्रव्यं सुवर्णरजतादि। यत् पितामहेन प्रतिग्रहविजयादिलब्धम्, तत्र पितुः पुत्रस्य च स्वाम्यं लोकप्रसिद्धमिति विभागोऽस्ति। हि यस्मात् सदृशं समानं स्वाम्यं, तस्मात् न पितुरिच्छयैव विभागो नापि पितुरभागद्वयम्। ततश्च, पितृतो भागकल्पनेत्येतत्स्वाम्ये समानेऽपि वाचनिकम्। अतः,—

"द्वावंशौ प्रतिपद्येत विभजन्नात्मनः पिता"—

इत्येवमादिकं युगान्तरे विषमविभागप्रतिपादनपरतया स्थापितम्। स्वार्जितद्रव्यविषयं वा। पैतामहधनविषये तु न क्वापि विषमविभागः,—इति। तथा, अविभक्तेन पित्रा पैतामहे द्रव्ये दीयमाने विक्रीयमाणे वा पौत्रस्य निषेधेऽप्यधिकारोऽस्तीति गम्यते।

पैतामहोपात्तेऽपि क्वचित् पितुरिच्छयैव स्वार्जितवद्विभागोभवतीत्याह मनुः,—

"पैतृकं तु पिता द्रव्यमनवाप्तं यदाप्नुयात्।

न तत्पुत्रैर्भजेत्सार्धमकामः स्वयमर्जितम्"—इति।

यत्पितामहार्जितं केनाप्यपहृतं यदि पिताऽहरति, तदा स्वार्जितमिव पुत्रैः साऽर्धमकामतः स्वयं न विभजेत्,—इति। एवं च सति, पितामहोपार्जिते न स्वेच्छयाविभाग इत्युक्तं भवति। बृहस्पतिरपि,—

"पैतामहं हृतं पित्रा स्वशक्त्या यदुपार्जितम्।

विद्याशौर्यादिना प्राप्तं तत्र स्वाम्यं पितुः स्मृतम्"—इति।

कात्यायनोऽपि,—

"क्रमाभ्युपागतं द्रव्यं हृतमभ्युद्धरेत्तु यः।

एतत्सर्वं पिता पुत्रैर्विभागं नैव दाप्यते"—इति।

यत्परैरपहृतं क्रमायातं स्वशक्त्योद्धृतं, यन्नष्टं क्रमायातं, यच्च विद्याशौर्यादिना स्वयमेवार्जितं, तत्सर्वं पिता विभागं पुत्रैर्न दाप्यइत्यर्थः। विभागोत्तरकालोत्पन्नस्य भागकल्पनाप्रकारमाह याज्ञवल्क्यः,—

"विभक्तेषु सुतोजातः सवर्णायां विभागभाक्"—इति।

अयमर्थः। विभक्तेषु पुत्रेषु सवर्णायां भार्य्यायां जातः पुत्रः पित्रोर्भागं भजते इति विभागभाक्—इति। मातृभागश्चासत्यां दुहितरि, ताभ्य ऋतेऽन्वयः,—इत्युक्तत्वात्। असवर्णायां जातस्तु स्वांशमेव पितृतो लभते, मातृकं तु सर्वमेव। अतएव मनुः,—

"ऊर्ध्वं विभागाज्जातस्तु पित्र्यमेव हरेद्धनम्"—इति।

पित्रोरिदं पित्र्यम्,

"अनीशाः पूर्वजाः पित्रोः भ्रातृभागे विभक्तजाः"—इति।

स्मरणात्। मातापित्रोर्भागे विभागात्पूर्वमुत्पन्नो न स्वामी, पित्रा सह पूर्वं विभक्तत्वात्। विभक्तजश्च भ्रातृधने न स्वामीत्यर्थः। विभागोत्तरकालं पित्रा स्वयमर्जितमपि विभागोत्तरकालमुत्पन्नस्यैव। तथाच मनुः,—

"पुत्रैः सह विभक्तेन पित्रा यत् स्वयमार्जितम् ।
विभक्तजस्य तत्सर्वमनीशाः पूर्वजाः स्मृताः"—इति ।

ये च विभक्ताः पुनः पित्रा सह संसृष्टास्तेषां विभागोत्तरकालमुत्पन्नेन सह विभागोऽस्तीत्याह मनुः,—

"संसृष्टास्तेन वा ये स्युर्विभजेत स तैः सह"—इति ।

अजीवद्विभागोत्तरकालं जातस्य पुत्रस्य भागकल्पनामाह याज्ञवल्क्यः,—

"दृश्याद्वा तद्विभागः स्यादायव्ययविशोधितात्"—इति ।

पितरि मृते भ्रातृविभागसमयेऽस्पष्टगर्भायां मातरि भ्रातृविभागोत्तरकालमुत्पन्नस्य विभागः, दृश्याद्भ्रातृभिर्गृहीतात् आयव्ययविशोधितात् उपचयापचयाभ्यां शोधिताद्धनात् किञ्चिदुद्धृत्य स्वांशसमो दातव्यः स्यादित्यर्थः ।

एतच्च मृतभ्रातृभार्यायामपि विभागसमये अस्पष्टगर्भायां विभागादूर्ध्वमुत्पन्नस्यापि वेदितव्यम् । स्पष्टगर्भायां तु प्रसवं प्रतीक्ष्यैव विभागः कर्त्तव्यः । "अथ भ्रातॄणां दायविभागो याश्चानपत्याः स्त्रियस्तासामापुत्रलाभात्"—इति वशिष्ठस्मरणात् । विभक्तेभ्यः पितृभ्यामर्थदाने विभक्तजस्य पुत्रस्य निषेधाधिकारो नास्ति, दत्तं च तेन न प्रत्याहर्त्तव्यमित्याह याज्ञवल्क्यः,—

"पितृभ्यां यस्य यद्दत्तं तत्तस्यैव धनं भवेत्"—इति ।

अजीवद्विभागे मातुरंशकल्पनामाह याज्ञवल्क्यः,—

"पितुरूर्ध्वं विभजतां माताऽप्यंशं समं हरेत्"—इति ।

एतच्च स्त्रीधनस्य अप्रदाने वेदितव्यम् । दत्ते त्वर्धमेव, "दत्ते त्वर्द्धांशहारिणी" इति स्मरणात् । अतएव स्मृत्यन्तरम्,—

"अनन्यधना पुत्रैर्विभागेऽंशं समं हरेत्"—इति ।

अधना प्रातिस्विकस्त्रीधनशून्या जननी पुत्रैर्विभागे क्रियमाणे पुत्रांशसममंशं हरेदित्यर्थः । जननीग्रहणं सापत्न्यादेरुपलक्षणार्थम् । तथाच व्यासः,—

"असुतास्तु पितुः पत्न्यः समानांशाः प्रकीर्त्तिताः ।
पितामह्यश्च सर्वास्ता मातृतुल्याः प्रकीर्त्तिताः"—इति ।

यत्तु कैश्चिदुक्तं, माताऽप्यंशं समं हरेदिति जीवनोपयुक्तमेव धनं माता गृह्णातीति । तन्न । अंशसमशब्दयोरानर्थक्यप्रसङ्गात् । अथोच्येत, बहुधने जीवनोपयुक्तं गृह्णाति स्वल्पधने पुत्रसमांशमिति । तदपि न । विधिवैषम्यप्रसङ्गात् ।

अजीवत्‌विभागी केषुचित्‌ भ्रातृष्वसंस्कृतेषु भगिनीषु वा ऽसंस्कृतासु तत्संस्कारः पूर्वसंस्कृतैर्भ्रातृभिः कर्त्तव्य इत्याह व्यासः,—

"असंस्कृतास्तु ये तत्र पैतृकादेव ते धनात्‌ ।

संस्कार्य्या भ्रातृभिः ज्येष्ठैः कन्यकाश्च यथाविधि"—इति ।

भगिनीसंस्कारे तु विशेषमाह याज्ञवल्क्यः,—

"असंस्कृतास्तु संस्कार्य्या भ्रातृभिः पूर्वसंस्कृतैः ।

भगिन्यश्च निजादंशाद्दत्वा ऽंशं तुरीयकम्‌"—इति ।

पितुरूर्ध्वं विभजद्भिर्भ्रातृभिरसंस्कृता भ्रातरः समुदायद्रव्येण संस्कर्तव्याः । भगिन्यस्त्वसंस्कृताः निजादंशात्स्वजातीया कन्यका तज्जातीयपुत्रभागात्‌ तुरीयं चतुर्थं भागं दत्वा संस्कर्तव्याः । अनेन पितुरूर्ध्वं दुहितरोऽप्यंशभागिन्य इति गम्यते । अतएव मनुः,—

"तेभ्योऽंशेभ्यस्तु कन्याभ्यः स्वं दद्युर्भ्रातरः पृथक्‌ ।

स्वात्‌ स्वादंशाच्चतुर्भागं पतिताः स्युरदित्सवः"—इति ।

ब्राह्मणादयो भ्रातरः ब्राह्मण्यादिभ्यो भगिनीभ्यो स्वजातिविहितेभ्योऽंशेभ्यः स्वात्‌ स्वादंशादात्मीयभागाच्चतुर्थभागं दद्युः ।

एतदुक्तं भवति । यदि कस्यचिद्ब्राह्मणस्यैव पत्नी पुत्रश्चैकः कन्या चैका, तत्र पित्र्यं द्रव्यं द्विधा विभज्य तत्रैकं भागं चतुर्धा विभज्य तुरीयांशं कन्यायै दत्वा शेषं पुत्रो गृह्णीयात्‌ । अथ द्वौ पुत्रौ कन्या चैका, तदा पितृधनं त्रेधा विभज्य तत्रैकं भागं चतुर्धा विभज्य तुरीयांशं कन्यायै दत्वा शेषं द्वौ पुत्रौ विभज्य गृह्णीतः । अथ एकः पुत्रः द्वे कन्ये, तदा पित्र्यं धनं त्रिधा विभज्य तत्रैकं भागं चतुर्धा विभज्य द्वौ भागौ ताभ्यां कन्याभ्यां दत्वाऽवशिष्टं सर्वं पुत्रो गृह्णाति । एवं समानजातीयेषु समविषमेषु भ्रातृषु भगिनीषु च समविषमासु योजनीयम्‌ ।

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एवं जातिवैषम्ये भ्रातॄणां भगिनीनां च सङ्ख्या वैषम्ये च सर्वत्रायं नियम इति मेधातिथिव्याख्यानम्‌ । एतदेव विज्ञानेश्वरयोगिनोऽप्यभिप्रेतम्‌ । आहचित्तु । चतुर्भागपदेन विवाहसंस्कारमात्रोपयोगि द्रव्यं विवक्षितम्‌ । अतो दायभागमसंस्कृतकन्यानां नास्तीति मन्यते । तदेव चन्द्रिकाकारस्याप्यभिप्रेतम्‌ । स आह । "अतएव न दायभागार्थमंशहरणम्‌, किन्तु विवाहसंस्कारार्थम्‌ । अतएव देवलेनोक्तम्‌,—

"कन्याभ्यश्च पितृद्रव्यं देयं वैवाहिकं वसु"—इति ।

अत्र यद्युक्तियुक्तं, तद्ग्राह्यम्। जीवद्विभागे तु यत्किञ्चित् पिता ददाति तदेव लभते कन्या, विशेषाश्रवणात्। पितृधनाभावे नारदः,—

"अविद्यमाने पित्रर्थे स्वांशादुद्धृत्य वा पुनः।
अवश्यकार्याः संस्काराः भ्रातृभिः पूर्वसंस्कृतैः"—इति।

भ्रातॄणां भगिनीनां च संस्काराः जातकर्माद्याः पूर्वसंस्कृतैः भ्रातृभिः पितृधनाभावेऽपि सावश्यकत्वेन कर्त्तव्याः। पैतृकद्रव्यविभागकाले स्वदत्तालङ्कारादिकमपि कन्यका प्राप्नोतीत्याह शङ्खः,—

"विभज्यमाने वै दाये कन्याऽलङ्कारमेव हि"—इति।

किञ्चित् स्त्रीधनं च लभेतेति। मुख्यगौणपुत्राणां स्वरूपं दायग्रहणक्रमञ्चाह याज्ञवल्क्यः,—

"औरसो धर्मपत्नीजः तत्समः पुत्रिकासुतः।
क्षेत्रजः क्षेत्रजातस्तु सगोत्रेणेतरेण वा॥
गृहे प्रच्छन्न उत्पन्नो गूढजस्तु सुतः स्मृतः।
कानीनः कन्यकाजातः मातामहसुतो मतः॥
अक्षतायां क्षतायां वा जातः पौनर्भवः स्मृतः।
दद्यान्माता पिता वा यं स पुत्रो दत्तको भवेत्॥
क्रीतश्च ताभ्यां विक्रीतः कृत्रिमः स्यात् स्वयं कृतः।
दत्तात्मा तु स्वयं दत्तो गर्भे विन्नः सहोढजः॥
उत्सृष्टो गृह्यते यस्तु सोऽपविद्धो भवेत् सुतः।
पिण्डदोंऽशहरश्चैषां पूर्वाभावे परः परः"—इति।

एषां पुत्राणां द्वादशानां पूर्वस्य पूर्वस्याभावे उत्तर उत्तरः पिण्डदः श्राद्धदः, अंशहरो धनहर इत्यर्थः। औरसपुत्रिकयोः समवाये औरसस्यैव धनग्रहणे प्राप्ते अपवादमाह मनुः,—

"पुत्रिकायां कृतायां तु यदि पुत्रोऽनुजायते।
समस्तत्र विभागः स्यात् ज्येष्ठता नास्ति हि स्त्रियाः"—इति।

वशिष्ठोऽपि क्वचिदपवादमाह। "तस्मिंश्चेत् प्रतिगृहीते औरसः उत्पद्यते चतुर्थभागभागी स्याद्दत्तकः"—इति। कात्यायनोऽपि,—

"उत्पन्ने त्वौरसे पुत्रे चतुर्थांशहराः सुताः।
सवर्णा असवर्णा वा ग्रासाच्छादनभाजनाः"—इति।

सवर्णाः क्षेत्रजदत्तकादयः। ते औरसे सत्यपि चतुर्थांशहराः। असवर्णाः कानीनगूढोत्पन्नसहोढ़पौनर्भवाः औरसे सति न चतुर्थांशहराः, अपि तु ग्रासाच्छादनमेव लभन्ते इत्यर्थः।

दत्तकादीनां न बीजिऋक्थभाक्त्वम्। तथाच मनुः,—

"गोत्रऋक्थे जनयितुर्न भजेद्दत्रिमः सुतः।
गोत्रऋक्थानुगः पिण्डोव्यपैति ददतः स्वधा"—इति।

दत्रिमग्रहणं चोपलक्षणार्थम्। दत्तव्यतिरिक्तानां गौणपुत्राणां ऋक्थभाक्त्वप्रतिपादकानि वाक्यानि युगान्तरविषयाणि, कलौ युगे तेषां पुत्रत्वेन परिग्रहणस्य स्मृत्यन्तरे निषिद्धत्वात्।

"दत्तौरसेतरेषान्तु पुत्रत्वेन परिग्रहः।
देवरेण सुतोत्पत्तिः वानप्रस्थाश्रमग्रहः॥
कलौ युगे त्विमान् धर्मान् वर्ज्यानाहुर्मनीषिणः"—इति।

शूद्रधनविभागे विशेषमाह याज्ञवल्क्यः,—

"जातोऽपि दास्यां शूद्रेण कामतोऽंशहरो भवेत्।
मृते पितरि कुर्य्युस्तं भ्रातरस्त्वर्धभागिनम्॥
अभ्रातृको हरेत्सर्वं दुहितॄणां सुताद्दृते"—इति।

कामतः पितुरिच्छया भागं लभते। मृते पितरि यदि परिणीतापुत्राभ्रातरः सन्ति, तदा ते दासीपुत्रं स्वभागादर्धभागिनं कुर्य्युः। अथ परिणीतापुत्रा दुहितरो वा तत्पुत्रा वा न सन्ति, तदा तद्धनं दासीपुत्रो लभते। तत्सद्भावे अर्द्धमेव। द्विजातीनां दास्यामुत्पन्नस्तु पितुरिच्छयाप्यंशं न लभते नाप्यर्द्धम्। जातोऽपि दास्यां शूद्रेणेति विशेषणात्। किन्त्वनुकूलश्चेज्जीवनमात्रं लभते इत्यभिप्रायः। अपुत्रदायग्रहणक्रममाह याज्ञवल्क्यः,—

"पत्नी दुहितरश्चैव पितरौ भ्रातरस्तथा।
तत्सुतो गोत्रजो बन्धुः शिष्यः सब्रह्मचारिणः॥
एषामभावे पूर्वस्य धनभागुत्तरोत्तरः।
स्वर्यातस्य ह्यपुत्रस्य सर्ववर्णेष्वयं विधिः"—इति।

औरसादयो द्वादशविधपुत्रा यस्य न सन्त्यसावपुत्रः। तस्य मृतस्य धनं पत्न्यादीनां पूर्वस्य पूर्वस्याभावे उत्तरोत्तरो गृह्णाति। अयं दायग्रहणक्रमः सर्वेषु

मूर्द्धावसिक्तादिष्वनुलोमजेषु वर्णेषु च ब्राह्मणादिषु वेदितव्य इत्यर्थः। पत्नी विवाहादिसंस्कृता नारी। सा प्रथमं पत्युर्धनं गृह्णाति। तदाह वृहस्पतिः,—

"कुलेषु विद्यमानेषु पितृभ्रातृसनाभिषु।
असुतस्य प्रमीतस्य पत्नी तद्भागहारिणी"—इति।

अत्र विशेषमाह वृद्धमनुः,—

"अपुत्रा शयनं भर्त्तुः पालयन्ती व्रते स्थिता।
पत्न्येव दद्यात्तत्पिण्डं कृत्स्नमंशं लभेत् च"—इति।

तदयं अपुत्रदायग्रहणक्रमः। द्वादशविधपुत्ररहितस्य मृतस्य धनं पत्नी गृह्णाति। तदभावे दुहिता। तदभावे दौहित्रः तदभावे माता। तदभावे पिता। तदभावे भ्राता। तदभावे तत्पुत्रः। तदभावे पितामही। तदभावे तद्धनं पितामहोगृह्णाति तत्पुत्रास्तत्पुत्राश्च। पितामहसन्तानाभावे प्रपितामहः तत्पुत्रास्तत्पुत्राश्चेति सप्तमपर्य्यन्तं गोत्रजा धनं गृह्णन्ति। सपिण्डानामभावे समानोदकाधनं गृह्णन्ति। समानोदकाश्च सपिण्डानामुपरि सप्तपुरुषाः, जन्मनामज्ञानपर्य्यन्ता वा। तदुक्तं वृहन्मनुना,—

"सपिण्डता तु पुरुषे सप्तमे विनिवर्त्तते।
समानोदकभावस्तु निवर्त्तेताचतुर्दशात्॥
जन्मनामस्मृतेरेके तत्परं गोत्रमुच्यते",—इति।

गोत्रजानामभावे बान्धवा धनं गृह्णन्ति। बान्धवाश्च त्रिविधाबौधायनेन दर्शिताः,—

"आत्मपितृष्वसुः पुत्राः आत्ममातृष्वसुः सुताः।
आत्ममातुलपुत्राश्च विज्ञेया आत्मबान्धवाः॥
पितुः पितृष्वसुः पुत्राः पितुर्मातृष्वसुः सुताः।
पितुर्मातुलपुत्राश्च विज्ञेयाः पितृबान्धवाः॥
मातुःपितृष्वसुः पुत्राः मातुर्मातृष्वसुः सुताः।
मातुर्मातुलपुत्राश्च विज्ञेया मातृबान्धवाः"—इति।

बन्धुष्वपि यस्तासन्नतरः सएव पूर्वं गृह्णाति। अतएव वृहस्पतिः,—

"बहवो ज्ञातयो यत्र सकुल्या बान्धवास्तथा।
यस्त्वासन्नतरस्तेषां सोऽनपत्यधनं हरेत्"—इति।

बन्धूनामभावे आचार्य्यः। आचार्य्याभावे शिष्यः। तदाह मनुः,—

"यो यो ह्यनन्तरः पिण्डात् तस्य तस्य धनं भवेत्।
अतं ऊर्ध्वं सकुल्यः स्यादाचार्य्यः शिष्य एवच"—इति।

आपस्तम्बोऽपि । "सपिण्डाभावे आचार्य्यः आचार्य्याभावे अन्तेवासी"—इति । शिष्याभावे सब्रह्मचारी, तस्याभावे यः कश्चित् श्रोत्रियो गृह्णाति । तदाह गौतमः । "श्रोत्रिया ब्राह्मणस्यानपत्यस्य ऋक्थं भजेरन्"—इति । तदाभावे ब्राह्मणः । तदाह मनुः,—

"सर्वेषामप्यभावे तु ब्राह्मणा ऋक्थभागिनः
त्रैविद्याः शुचयोदान्तास्तथा धर्म्मो न हीयते"—इति ।

ब्राह्मणधनं न कदाचिदपि राजगामि । क्षत्रियादिधनं तु सब्रह्मचारिपर्य्यन्तानामभावे राजगामि ।

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नन्वनपत्यस्य धनं प्रथममेव पत्नी गृह्णातीत्येतदनुपपन्नम् । पत्नीसद्भावेऽपि भ्रातृणां धनग्रहणस्य पत्नीनां वा भरणमात्रस्य नारदेनोक्तत्वात्,—

"भ्रातृणामप्रजाः प्रेयात् कश्चिच्चेत् प्रव्रजेत वा ।
विभजेरन् धनं तस्य शेषास्ते स्त्रीधनं विना ॥
भरणं चास्य कुर्वीरन् स्त्रीणामाजीवनक्षयात् ।
रक्षन्ति शय्यां भर्त्तुश्चेदाच्छिन्द्युरितरासु तत्"—इति ।

तन्न,

"संसृष्टानां तु योभागस्तेषात्रैव स इष्यते"—

इति प्रक्रम्य भ्रातृणामप्रजाः प्रेयादित्यादिवचनस्य पठितत्वेन संसृष्टभ्रातृभार्य्याणामनपत्यानां भरणमात्रं संसृष्टभ्रातृणां च धनग्रहणम् ।

संसृष्टानान्तु यो भागस्तेषामेव स इष्यते ।
अनपत्यांशभागो हि निर्बीजेष्वितरानियात्"—

इत्यनेन पौनरुक्त्यप्रसङ्गात् । अथ वा । अविभक्तविषयत्वमस्तु, याज्ञवल्क्यवचनं तु विभक्तस्यासंसृष्टिनो भर्त्तृधनं पत्न्येव प्रथमं गृह्णातीत्येवंपरमित्यविरोधः । यत्तु मनुनोक्तम्,—

"पिता हरेदपुत्रस्य ऋक्थं भ्रातर एववा"—इति ।

यदपि कात्यायनेनोक्तम्,—

"विभक्ते संस्थिते द्रव्यं पुत्राभावे पिता हरेत् ।
भ्राता वा जननी वाऽथ माता वा तत्पितुः क्रमात्"—इति ।

मनुवचनं तावत् न क्रमप्रतिपादनपरम्, एव वेति विकल्पश्रवणात् । कात्यायनवचनं तु पत्न्यां व्यभिचारिण्यां पित्रादेरपत्यधनग्राहित्वप्रतिपादनपरम् ।

"भर्त्तुर्धनहरी पत्नी या स्यादव्यभिचारिणी ।
अपचारक्रियायुक्ता निर्लज्जा वाऽर्थनाशिका ।
व्यभिचाररता या च स्त्रीधनं सा न चार्हति"—इति ।

तेनैवोक्तत्वात् । धनं जीवनार्थोपक्लृप्तं चैवांशं नार्हतीत्यर्थः । धारेश्वरस्तु, अनपत्यधनं पत्नी गृह्णातीत्येवमादिवचनसङ्घातस्य प्रकारान्तरेण विषयव्यवस्थामाह । नियोगार्थिनी पत्नी अनपत्यस्य विभक्तस्य यद्धनं गृह्णाति । तथाच मनुः,—

"धनं यो विभृयाद्भ्रातुः मृतस्य स्त्रियमेव वा ।
सोऽपत्यं भ्रातुरुत्पाद्य दद्यात्तस्यैव तद्धनम् ॥
कनीयान् ज्येष्ठभार्य्यायां पुत्रमुत्पादयेद्यदि ।
समस्तत्र विभागः स्यादिति धर्म्मो व्यवस्थित."— इति ।

विभक्तधने भ्रातरि मृते अपत्यद्वारेणैव पत्न्याधनसम्बन्धः, नान्यथा । अविभक्त-धनेऽपि तथैवेत्यभिप्रायः । गौतमोऽपि । "पिण्डगोत्रर्षिसम्बन्धा रिक्थं भजेरन् स्त्री वा अनपत्यस्य बीजं वा लिप्सेत"—इति । संग्रहकारोऽपि,—

"भ्रातृषु प्रविभक्तेषु संसृष्टेष्वप्यसत्सु वा ।
गुर्वादेशनियोगस्था पत्नी धनमवाप्नुयात्"—इति ।

तदनुपपन्नं पत्नी दुहितर इत्यत्र नियोगाश्रवणात् । अश्रुतोऽपि नियोगो गौतमादिवचनबलात्कल्प्यते इति युक्तमिति चेत् । न । गौतमादिवचनानामर्थान्तर-परत्वात् । तथा हि । तत्र यद्गौतमवचनं, "सपिण्डसम्बन्धा ऋषिसम्बन्धा रिक्थं भजेरन् । स्त्री वा अनपत्यस्य बीजं लिप्सेत"—इति । तस्य नायमर्थः, यदि बीजं लिप्सेत तदा पत्नी अनपत्यधनं गृह्णातीति । अपि त्वनपत्यस्य धनं पिण्डगोत्रर्षि सम्बन्धा गृह्णीयुः । जाया न । सा स्त्री बीजं वा लिप्सेत संयता वा भवेदिति । वाशब्दस्य पक्षान्तरवचनत्वेन यद्यर्थे प्रयोगाभावात् । यदपि धनं यो विभृयादित्यादि मनुवचनं, तदपि क्षेत्रजस्यैव धनसम्बन्धं वक्ति न पत्न्या इति । ग्रन्थवचनमपि संयताया एव धनसम्बन्धं वक्ति, न तु देवरादिनियुक्तायाः । अन्यथा,

"अपुत्रा शयनं भर्त्तुः पालयन्ती व्रते स्थिता ।
पत्न्येव दद्यात्तत्पिण्डं कृत्स्नमंशं लभेत च"—इति ।

तथा,

"अपुत्रा शयनं भर्त्तुः पालयन्ती व्रते स्थिता ।
भुञ्जीतामरणात् क्षान्ता दायादा ऊर्ध्वमाप्नुयुः"—

इति मनुकात्यायनवचनविरोधप्रसङ्गात्। तस्मादनपत्यस्य विभक्तस्यासंसृष्टिनो मृतस्य धनं पत्नी गृह्णाति इत्येव व्यवस्था ज्यायसी। यत्तु स्त्रीणां धनसम्बन्धाभावप्रतिपादकवचनम्,—

"यज्ञार्थं द्रव्यमुत्पन्नं तत्रानधिकृतास्तु ये।

अरिक्थभाजस्ते सर्वे ग्रासाच्छादनभाजनाः॥

यज्ञार्थं विहितं वित्तं तस्मात्तद्विनियोजयेत्।

स्थानेषु धर्मजुष्टेषु न स्त्रीमूर्खविधर्मिषु"—इति।

तद्यज्ञार्थमेव सम्पादितधनविषयम्। यदपि कात्यायनेनोक्तम्,—

"अदायिकं राजगामि योषिद्भृत्यौर्ध्वदेहिकम्।

अपास्य श्रोत्रियद्रव्यं श्रोत्रियेभ्यस्तदर्पयेत्"—इति।

स्त्रीणामशनाच्छादनोपयुक्तं धनिनः श्राद्धाद्युपयुक्तञ्च मुक्त्वा अदायिकधनं राजगामि भवति। श्रोत्रियद्रव्यं तु योषिद्भृत्यौर्ध्वदेहिकमपास्य श्रोत्रियस्यैव न राज्ञ इत्यर्थः। यदपि नारदेनोक्तम्,—

"अन्यत्र ब्राह्मणात्किञ्चिद्राजा धर्मपरायणः।

तत्स्त्रीणां जीवनं दद्यादेष दायविधिः स्मृतः"—इति।

तदुभयमप्यवरुद्धस्त्रीविषयं, पत्नीशब्दश्रवणात्। यदपि हारीतेनोक्तम्,—

"विधवा यौवनस्था चेत् पत्नी भवति कर्कशा।

आयुषो रक्षणार्थं तु दातव्यं जीवनं तदा"—इति।

तदपि शङ्कितव्यभिचारस्त्रीविषयम्। यदपि प्रजापतिवचनम्,—

"आढकं भर्त्तृहीनायाः दद्यादामरणान्तिकम्"—इति।

यदपि स्मृत्यन्तरे,—

"अन्नार्थं तण्डुलप्रस्थमपराह्णे तु सेन्धनम्"—इति।

तदेतद्वचनद्वयं हारीतवचनेन समानार्थम्। या च श्रुतिः। "तस्मात् स्त्रियो निरिन्द्रिया अदायादाः"—इति। सा पात्नीवतग्रहे तत्पत्न्या अंशोनास्तीत्येवम्परा। इन्द्रियशब्दस्य "इन्द्रियं वै सोमपीथ,"—इति सोमे प्रयोगदर्शनात्। यत्तु पत्न्याः स्थावरग्रहणनिषेधकं बृहस्पतिवचनम्,—

"यद्विभक्तं धनं किञ्चिदाध्यादिविविधं स्मृतम्।

तज्जाया स्थावरं मुक्त्वा लभेत गतभर्तृका"—इति।

तदितरदायादानुमतिमन्तरेण स्थावरविक्रयनिषेधपरम्। अन्यथा,—

"जङ्गमं स्थावरं हेम रूप्यं धान्यरसाम्बरम् ।
आदाय दापयेत् श्राद्धं माससंवत्सरादिकम् ॥
पितृव्यगुरुदौहित्रान् भर्त्तुः स्वस्रीयमातुलान् ।
पूजयेत् कव्यपूर्त्ताभ्यां वृद्धानाथातिथींस्तथा"—इति ।

अनेन विरोधप्रसङ्गात् ।

संसृष्टिविभागप्रकारमाह मनुः,—

"विभक्ताः सह जीवन्तो विभजेरन् पुनर्यदि ।
समस्तत्रविभागः स्याज्ज्यैष्ठ्यं तत्र न विद्यते"—इति ।

समविभागविधानादेव विषमविभागनिराकरणसिद्धेः ज्यैष्ठ्यं तत्र न विद्यते इति पुनर्विषमविभागनिराकरणं विषमधनेन संसृष्टानां धनानुसारेण विषमविभागप्राप्त्यर्थम् । संसर्गः केषित्यपेक्षिते वृहस्पतिः,—

"विभक्तो यः पुनः पित्रा भ्राता चैकत्र संस्थितः ।
पितृव्येणाथवा प्रीत्या तत्संसृष्टः स उच्यते"—इति ।

यः पूर्वं पित्रादिना विभक्तः पुत्रादिः पुनः प्रीत्या तेन सह समापन्नः, स संसृष्ट उच्यते । येन केनापि सहवासमापन्न इत्यर्थः । क्वचित्संसृष्टिनां विषमविभागमाह वृहस्पतिः,—

"संसृष्टानान्तु यः कश्चित् विद्याशौर्य्यादिनाऽधिकम् ।
प्राप्नोति तत्र दातव्योद्व्यंशः शेषाः समांशिनः"—इति ।

विद्यादिना प्राप्ते अधिके धने अंशद्वयं दातव्यं न सर्वस्मिन्निति । एतत्संसृष्टद्रव्यानुपरोधेनार्जितेऽपि विभाज्यत्वप्राप्त्यर्थम् । अपुत्रस्य संसृष्टिनः ऋक्थग्राहित्वं दर्शयति याज्ञवल्क्यः,—

"संसृष्टिनस्तु संसृष्टी सोदरस्य तु सोदरः ।
दद्याच्चापहरेच्चांशं जातस्य च मृतस्य च"—इति ।

अयमर्थः । संसृष्टिनो मृतस्यांशं विभागकाले अविज्ञातगर्भायां भार्य्यायां पश्चादुत्पन्नस्य पुत्रस्य इतरः संसृष्टी दद्यात्, पुत्राभावे संसृष्टेवापहरेत, न पत्न्यादि । पत्नीनामप्रत्तदुहितॄणां च भरणमात्रम् । तदाह नारदः,—

"भरणं चास्य कुर्वीरन् स्त्रीणामाजीवनक्षयात् ।
रक्षन्ति शय्यां भर्त्तुश्चेदाच्छिन्द्युरितरासु तत् ।
यदा दुहितरस्तस्याः पित्र्योंऽशो भरणे मतः ।
आ संस्काराद्धरेद्भागं परतो बिभृयात् पतिः"—इति ।

सोदरस्य तु सोदर इति, सोदरस्य संसृष्टिनः तत्स्थांशं सोदरः संसृष्टी पश्चादुत्पन्नस्य पुत्रस्य दद्यात्। तदभावे स्वयमेवापहरेत्, न भिन्नोदरः। संसृष्टीति पूर्वोक्तस्यापवादः। संसृष्टिनो भिन्नोदरस्य सोदरस्यासंसृष्टिनः सद्भावे उभयोरपि विभज्य धनग्रहणमित्याह,—

"अन्योदर्य्यस्तु संसृष्टी नान्योदर्य्योधनं हरेत्।
असंसृष्टयपि वाऽऽदद्यात्सोदरो नान्यमातृजः"—इति।

सापत्नभ्राता संसृष्टी अन्योदर्य्यधनं हरेत् न त्वसंसृष्टी। असंसृष्टयपि सोदरः सोदरस्य धनमाददीत। न पुनरन्योदर्य्यः संसृष्टोऽपि। अतएव मनुः,—

"येषां ज्येष्ठः कनिष्ठो वा हीयेतांशप्रदानतः।
म्रियेतान्यतरो वाऽपि तस्य भागो न लुप्यते॥
सोदर्य्या विभजेयुस्तं समेत्य सहिताः समम्।
भ्रातरो ये च संसृष्टा भगिन्यश्च सनाभयः"—इति।

अयमर्थः। येषां संसृष्टिनां भिन्नोदराणां भ्रातृणां मध्ये यः कोऽपि ज्येष्ठः कनिष्ठो मध्यमो वा विभागकाले देशान्तरगमनादिना स्वांशात् भ्रश्येत, तस्य भागो न लुप्येत—पृथगुद्धरणीयः। न संसृष्टिनएव गृह्णीयुः। किन्तु तमुद्धृतं भागम् असंसृष्टिनः सोदराः संसृष्टिनश्च भिन्नोदराः सनाभयो भगिन्यश्च देशान्तरगता अपि समागत्य सम्भूय न्यूनाधिकभावमन्तरेण विभजेयुः। अन्ये मन्यन्ते।

"असंसृष्टोऽपि वा दद्यात् संसृष्टो नान्यमातृजः"—

इत्यस्यायमर्थः। यत्र संसृष्टा भिन्नोदराः असंसृष्टाश्च सोदराः, तत्रासंसृष्टा अपि सोदरा एव धनं गृह्णीयुः न तु भिन्नोदराः संसृष्टा अपीति। यत्तु, येषां ज्येष्ठ इत्यादिमनुवचनं संसृष्टानां भिन्नोदराणामसंसृष्टानामेकोदराणां च सर्व्वेषां धनग्रहणप्रतिपादकम् तत् जङ्गमस्थावरात्मकोभयद्रव्यसद्भावविषयम्। अतएव प्रजापतिः,—

"अन्यधनन्तु यद्द्रव्यं संसृष्टानां च तद्भवेत्।
भूमिं गृहं त्वसंसृष्टाः प्रगृह्णीयुर्यथांऽशतः"—इति।

अयमर्थः। संसृष्टानां भिन्नोदरभ्रातृणामन्यधनं गूढधनं द्रव्यं वा जङ्गमात्मकं यथांऽशतो भवेत्। सोदराणामसंसृष्टानां गृहक्षेत्रादिकं स्थावररूपं यथांऽशतो भवेत्,—इति। याज्ञवल्क्यवचनन्तु जङ्गमस्थावरयोरन्यतरसद्भावविषयमिति। तत्र यद्युक्तं तद्ग्राह्यम्।

यदा तु संसृष्टभिन्नोदराभावः, तदा पिता पितृव्यो वा यः संसृष्टः सएव गृह्णीयात्। तथाच गौतमः। "संसृष्टिनि प्रेते संसृष्टीऋक्थभाक्"—इति।

यदा पिता पितृव्यो वा संसृष्टी न विद्यते, तदा त्वसंसृष्टभिन्नोदरो भ्राता गृह्णीयात्। तदभावे त्वसंसृष्टपिता, तदभावे माता, तदभावे पत्नी। तदाह शङ्खः। "स्वर्यातस्य ह्यपुत्रस्य भ्रातृगामि द्रव्यं तदभावे पितरौ हरेयातां तदभावे ज्येष्ठा पत्नी"—इति। ज्येष्ठा संयता, न तु पूर्व्वोढा। संसृष्टभ्रातृपुत्राणां पत्न्याश्च समवाये धनग्रहण-प्रकारमाह नारदः,—

"मृते पत्यौ तु भार्य्याश्चेद्भ्रातृपितृमातृकाः।
सर्व्वे सपिण्डाः स्वधनं विभजेयुर्यथांशतः"—इति।

भ्रातृपितृमात्रभावविशिष्टा अभ्रातृपितृमातृका भार्य्या सर्व्वे सपिण्डा भ्रातृ-पुत्रादयः। तत्र भ्रातृपुत्राणां स्वपित्रंशतः भार्य्याणां भर्त्रंशतः संसृष्टधनस्य विभाग इत्यर्थः। पत्नीनामभावे संसृष्टापुत्रांशं तद्भगिनी गृह्णाति। तदाह बृहस्पतिः,—

"या तस्य भगिनी सा तु ततोऽंशं लब्धुमर्हति।
अनपत्यस्य धर्म्मोऽयमभार्य्यापितृकस्य च"—इति।

चशब्दो भ्रातृमातृभावसमुच्चयार्थः। केचित्तु, "या तस्य दुहिता"—इति पठित्वा पत्नीनामभावे दुहिता गृह्णीतेत्याहुः। दुहितृभगिन्योरभावे,

"अनन्तरः सपिण्डादयस्तस्य तस्य धनं भवेत्"—

इत्युक्तप्रत्यासत्तिक्रमेण सर्वे सपिण्डादयो धनं गृह्णीयुः। प्रतिपक्षे दोषाणाम-भावात्। अतएव बृहस्पतिः,—

"मृतोऽनपत्योऽभार्य्यश्चेदभ्रातृपितृमातृकः।
सर्वे सपिण्डास्तद्दायं विभजेयुर्यथांशतः"—इति।

वानप्रस्थयतिनैष्ठिकब्रह्मचारिणां धनं को वा गृह्णातीत्यपेक्षिते आह याज्ञवल्क्यः,—

"वानप्रस्थयतिब्रह्मचारिणां रिक्थभागिनः।
क्रमेणाचार्य्यसच्छिष्यधर्मभ्रात्रेकतीर्थिनः"—इति।

अत्र प्रातिलोम्यक्रमेण नैष्ठिकब्रह्मचारिणां धनं आचार्य्यो गृह्णाति, न पित्रादिः। उपकुर्व्वाणकस्य धनं पित्रादय एव गृह्णन्ति। यतेस्तु धनमध्यात्मशास्त्रश्रवणधारण-तदनुष्ठानक्षमः सच्छिष्यो गृह्णाति। दुर्वृत्तस्य भागानर्हत्वात्। वानप्रस्थधनं धर्म्मभ्रात्रेकतीर्थो गृह्णाति। धर्म्मभ्राता समानाचार्य्यकः। एकतीर्थो एकाश्रमी। धर्म्मभ्राता चासावेकतीर्थो च धर्म्मभ्रात्रेकतीर्थो।

अथवा वानप्रस्थयतिब्रह्मचारिणां धनमाचार्य्यसच्छिष्यधर्म्मभ्रात्रेकतीर्थिनः क्रमेणैव गृह्णन्ति। पूर्व्वपूर्व्वाभावे उत्तरोत्तरो गृह्णातीत्यर्थः। यत्तु वसिष्ठेनोक्तम् "अनंशास्त्वा-

श्रमान्तरगताः"—इति। तदन्याश्रमिणामन्याश्रमिधनग्रहणनिषेधपरम्। न तु समानाश्रमिणां परस्परऋक्थग्रहणनिषेधपरम्।

नन्वेतेषां धनसम्बन्धएव नास्ति कुतस्तद्विभागः। प्रतिग्रहादेर्धनार्जनोपायस्य निषिद्धत्वात्। "अनर्थनिचयी भिक्षुः"—इति गौतमस्मरणाच्च। तत्र,

"अह्नोमासस्य षण्मां वा तथा संवत्सरस्य च।

अर्थस्य निचयं कुर्य्यात् कृतमाश्वयुजे त्यजेत्"—

इति वानप्रस्थस्य धनसंयोगोऽस्ति।

"कौपीनाच्छादनार्थं तु वासोऽपि बिभृयाद्यतिः।

योगसम्भारभेदांश्च गृह्णीयात् पादुके तथा"—

इति वचनाद्यतेरपि वस्त्रपुस्तकादिकं विद्यतएव। नैष्ठिकस्यापि शरीरयात्रार्थं वस्त्रपरिग्रहोऽस्त्येवेति तद्विभागो घटतएव।

दायानर्हानाह मनुः,—

"अनंशौ क्लीवपतितौ जात्यन्धबधिरौ तथा।

उन्मत्तजडमूकाश्च ये च केचिन्निरिन्द्रियाः"—इति।

निरिन्द्रियाः व्याधिना विकलेन्द्रियाः। नारदोऽपि,—

"पितृद्विट् पतितः षण्ढो यश्च स्यादौपपातिकः।

औरसा अपि नैतेऽंशं लभेरन् चेत्रजाः कुतः"—इति।

वशिष्ठोऽपि। "अनंशास्त्वाश्रमान्तरगताः"—इति। याज्ञवल्क्यः,—

"क्लीवोऽथ पतितस्तज्जः पङ्गुरुन्मत्तको जड़ः।

अन्धोऽचिकित्स्यरोगाद्याः भर्त्तव्याः स्युर्निरंशकाः"—इति।

तज्जः पतितोत्पन्नः। आदिशब्देन मूकादयो गृह्यन्ते। एते निरंशकाः ऋक्थभाजो न भवन्ति। केवलमशनाच्छादनेन भर्त्तव्याः पोषणीयाः। अभरणे तु प्रत्यवायमाह मनुः,—

"सर्वेषामपि तु न्याय्यं दातुं शक्त्या मनीषिणः।

ग्रासाच्छादनमत्यन्तं पतितो ह्यददद्भवेत्"—इति।

अत्यन्तं यावज्जीवमित्यर्थः। पतितस्य भर्त्तव्यत्वादि नास्तीत्याह देवलः,—

"तेषां पतितवर्ज्येभ्यो भक्तं वस्त्रं प्रदीयते"—इति।

पतितशब्देन तज्जातोऽप्युपलक्ष्यते। आश्रमान्तरगता अपि ते भर्त्तव्याः। अतएव वशिष्ठः। "अनंशास्त्वाश्रमान्तरगताः। क्लीवोन्मत्तपतिताश्च भरणं क्लीवोन्मत्तानाम्"—इति। अंशानर्हाणां पुत्रास्त्वंशभाजः। तदाह देवलः,—

"सत्सुता: पितृदायांशं लभेरन् दोषवर्जिता:"—इति।

निरंशकानां पुत्रा औरसा: चेत्रजाश्च क्लैव्यादिदोषवर्जिताभागहारिणो न दत्तकादय:। अतएव याज्ञवल्क्य: परिसंचष्टे,—

"औरसा: चेत्रजास्तेषां निर्दोषा भागहारिण:"—इति।

निरंशकानां दुहितरो यावत् विवाहं भर्त्तव्या: संस्कर्त्तव्या:, पत्न्यश्च साधुवृत्तयो यावज्जीवं भर्त्तव्या:। तथाच सएव,—

"सुतास्त्वेषां च भर्त्तव्या यावद्वै भर्तृसात्कृता:।

अपुत्रा योषितश्चैषां भर्त्तव्या: साधुवृत्तय:॥

निर्वास्याव्यभिचारिण्य: प्रतिकूलास्तथैवच"—इति।

अन्यानपि भागानर्हान् दर्शयति याज्ञवल्क्य:,—

"अक्रमोढासुतश्चैव सगोत्राद्यश्च जायते।

प्रव्रज्याऽवसितश्चैव न रिक्थन्तेषु चार्हति"—इति।

मनुरपि,—

"अनियुक्तासुतश्चैव पुत्रिण्याऽऽप्तश्च देवरात्।

उभौ तौ नार्हतो भागं जारजातककामजौ"—इति।

स्त्रीधनविभागमाह याज्ञवल्क्य:,—

"पितृमातृपतिभ्रातृमातृदत्तमध्यग्न्युपागतम्।

आधिवेदनिकाद्यञ्च स्त्रीधनं परिकीर्त्तितम्॥

बन्धुदत्त तथा शुल्कमन्वाधेयकमेवच।

अप्रजायामतीतायां बान्धवास्तदवाप्नुयु:"—इति।

अध्यग्न्युपागतं विवाहकालेऽग्निसन्निधौ मातुलादिभिर्दत्तम्। तथाच कात्यायन:,—

"विवाहकाले यत् स्त्रीभ्यो दीयते ह्यग्निसन्निधौ।

तदध्यग्निकृतं सद्भि: स्त्रीधनं परिकीर्त्तितम्"—इति।

आधिवेदनिकमधिवेदननिमित्तमधिविन्नस्त्रियै दत्तम्। आद्यशब्देन अध्यावाहनिकऋक्थक्रयादिप्राप्तम्। तथाच मनु:,—

"अध्यग्न्यध्यावाहनिकं दत्तं च प्रीतिकर्मणि।

भ्रातृमातृपितृप्राप्तं षड्विधं स्त्रीधनं स्मृतम्"—इति।

षड्विधमिति न्यूनसङ्ख्याव्यवच्छेदार्थम्। नाधिकसङ्ख्याव्यवच्छेदाय। अध्यावाहनिकप्रीतिदत्तयो: स्वरूपं कात्यायनेनोक्तम्,—

"यत्पुनर्लभते नारी नीयमाना पितुर्गृहात्।
अध्यावाहनिकं नाम स्त्रीधनं तदुदाहृतम् ॥
प्रत्या दत्तञ्च यत्किञ्चिदन्येन श्वशुरेण वा।
आधिवेदनिकञ्चैव प्रीतिदत्तं तदुच्यते"—इति।

बन्धुदत्तं कन्यामातृपितृबन्धुभिर्दत्तम्। शुल्कं यद् गृहीत्वा कन्या दीयते। अन्वाधेयकं परिणयनादनु पश्चाद्दत्तम्। तदुक्तं कात्यायनेन,—

"गृहोपस्करवाह्यानां दोह्याभरणकर्मिणाम्।
मूल्यं लब्धन्तु यत्किञ्चित् शुल्कं तत् परिकीर्त्तितम् ॥
विवाहात्परतो यत्तु लब्धं भर्त्तुः कुलात् स्त्रिया।
अन्वाधेयं तु तद्द्रव्यं लब्धं पितृकुलात् तथा"—इति।

पित्रादिभिः स्त्रीभ्यो धनदाने विशेषमाह कात्यायनः,—

"पितृमातृपतिभ्रातृज्ञातिभिः स्त्रीधनं स्त्रियै।
यथाशक्त्या द्विसाहस्रं दातव्यं स्थावरादृते"—इति।

यथाशक्ति स्थावरव्यतिरिक्तं धनं द्विसहस्रकार्षापणपर्य्यन्तं दातव्यमित्यर्थः। अयञ्च नियमः प्रत्यब्ददाने वेदितव्यः। अनेकाब्दे तूपजीवनार्थं सकृदेव दाने नायमवधिनियमः। नापि स्थावरपर्य्युदासः। तथाच बृहस्पतिः,—

"दद्याद्धनञ्च पर्य्याप्तं चेत्रांशं वा यदिच्छति"—इति।

अतएव सौदायिके स्थावरेऽपि यथेष्टविनियोगार्हत्वमुक्तन्तेनेव,—

"ऊढया कन्यया वाऽपि भर्त्तुः पितृगृहेऽपि वा।
भ्रातुः सकाशात् पित्रोर्वा लब्धं सौदायिकं स्मृतम् ॥
सौदायिकं धनं प्राप्य स्त्रीणां स्वातन्त्र्यमिष्यते।
यस्मात्तदानृशंस्यार्थं तदैतदुपजीवनम् ॥
विक्रये चैव दाने च यथेष्टं स्थावरेष्वपि"—इति।

पतिदत्तस्थावरेऽपि विशेषमाह नारदः,—

"भर्त्रा प्रीतेन यद्दत्तं स्त्रियै तस्मिन्मृतेऽपि च।
सा यथाकाममश्नीयात् दद्यात् वा स्थावरादृते"—इति।

पित्रादिभिरुपाध्यादिना दत्तं स्त्रीधनं न भवतीत्याह कात्यायनः,—

"तत्र सोपाधि यद्दत्तं यच्च योगवशेन वा।
पित्रा भ्रात्राऽथवा पत्या न तत् स्त्रीधनमिष्यते"—इति।

उत्सवादौ धारणार्थं दत्तमलङ्कारादिकं सौपाधिदत्तम्। यौतकग्रहेन वचनादि-नेत्यर्थः। शिल्पादिप्राप्तमपि स्त्रीधनं न भवतीत्याह सएव,—

"प्राप्तं शिल्पैस्तु यद्वित्तं प्रीत्या चैव यदन्यतः।
भर्त्तुः स्वाम्यं तदा तत्र शेषं तु स्त्रीधनं स्मृतम्"—इति।

अन्यतः स्वादित इति यावत्। तदेतत् स्त्रीधनं दुहितृदौहित्रपुत्ररहितायां स्त्रियामतीतायां बान्धवा भर्त्रादयो गृह्णन्ति। अत्रैवं क्रमः। मातरि वृत्तायां प्रथमं दुहिता गृह्णाति। अतएवोक्तं तेनैव,—

"मातुर्दुहितरः शेषमृणात्ताभ्यः ऋतेऽन्वयः"—इति।

गौतमोऽपि। "स्त्रीधनं दुहितृणां अप्रत्तानां अप्रतिष्ठितानां च"—इति। दुहितृणामभावे दौहित्र्यो गृह्णन्ति। तद्दुहितृणां प्रसूता चेदिति याज्ञवल्क्य-स्मरणात्। भिन्नमातृकाणां दौहित्रीणां विषमाणां समवाये मातृतो भागकल्पना। तथाच गौतमः। "पितृमातृस्वसृवर्गे भागविशेषः"—इति। दुहितृदौहित्रीणां समवाये मनुः,—

"यस्तासां स्युर्दुहितरस्तासामपि यथार्हत।
मातामह्या धनात् किञ्चित् प्रदेयं प्रीतिपूर्वकम्"—इति।

दौहित्रीणामप्यभावे दौहित्रा धनहारिणः। तथाच नारदः,—

"मातुर्दुहितरोऽभावे दुहितृणां तदन्वयः"—इति।

दुहितृदुहितृणामभावे तदन्वयी दौहित्रो गृह्णातीत्यर्थः। दौहित्राणामभावे,—

"विभजेरन् सुताः पित्रोरूर्ध्वं ऋक्थमृणं समम्"—

इत्यादियाज्ञवल्क्यवचनतः मातृऋणापाकरणतोऽवशिष्टं मातृधनं पुत्रा गृह्णन्ति। यत्तु मनुनोक्तम्,—

"जनन्यां संस्थितायान्तु समं सर्वे सहोदराः।
भजेरन् मातृकं ऋक्थं भगिन्यश्च सनाभयः"—इति।

एतत् पुत्राणां दुहितृणां च सम्भूय मातृऋक्थग्राहित्वपरं न भवति; किन्तु तेषां धनसम्बन्धे प्राप्ते समविभागप्राप्त्यर्थं, समशब्दश्रवणात्। यदपि शङ्खलिखिता-भ्यामुक्तम्। "समं सर्वे सहोदरामातृकं ऋक्थमर्हन्ति कुमार्य्यश्च"—इति। यदपि मनुवचनेन समानार्थम्। अथ वा, एतद्वचनद्वयं भर्त्तुः कुललब्धस्त्रीधनविषयम्। अस्मिन्नेव विषये बृहस्पतिः,—

"स्त्रीधनं तदपत्यानां दुहिता तदंशिनी।
अप्रत्ता चेत्समूढा तु लभते सा न मातृकम्"—इति

अपत्यानां पुमपत्यानाम्। यत्तु पारस्करेणोक्तम्,—

"अप्रत्तायान्तु दुहितुः स्त्रीधनं परिकीर्त्तितम्।
पुत्रस्तु नैव लभते प्रत्तायां तु समांशभाक्"—इति।

तदप्रतिष्ठिता षण्डदुहितृविषयम्। अतएव मनुः,—

"मातुस्तु यौतकं यत् स्यात् कुमारीभागएव सः"—इति।

यौतकं पितृकुललब्धम्। अनपत्यहीनजातिस्त्रीधनं उत्तमजातिसपत्नीदुहिता गृह्णाति, तदभावे तदपत्यम्। तदुक्तं मनुना,—

"स्त्रियास्तु यद्भवेद्वित्तं पित्रा दत्तं कथञ्चन।
ब्राह्मणी तद्धरेत्कन्या तदपत्यस्य वा भवेत्"—इति।

ब्राह्मणी उत्तमाधमजात्युपलक्षणार्थम्। पुत्राणामभावे पौत्रा गृह्णन्ति पौत्राणामपि पितामह्यृणापाकरणम्। पुत्रपौत्रैर्ऋणं देयमिति अधिकारश्रवणात्। अस्तु ऋणापाकरणेऽधिकारः। ऋक्थभाक्त्वं कुतइति चेत्। तन्न। "ऋक्थभाजः ऋणं प्रतिकुर्य्युः"—इति गौतमवचनेन ऋक्थभाजामेव ऋणापाकरणाधिकारश्रवणात्। पौत्राणामप्यभावे भर्त्रादयोऽपि ऋक्थभाजः। अत्रैव विवाहभेदेन विशेषमाह मनुः,—

"ब्राह्मदैवार्षगान्धर्वप्राजापत्येषु यद्धनम्।
अप्रजायामतीतायां भर्त्तुरेव तदिष्यते॥
यत्त्वस्यै स्याद्धनं दत्तं विवाहेष्वासुरादिषु।
अतीतायामप्रजायां मातापित्रोस्तदिष्यते"—इति।

ब्राह्मदैवार्षगान्धर्वप्राजापत्यविवाहेषु संस्कृताया भार्य्याया यद्धनं तद्दुहित्रादिपौत्रान्ततद्धनहारिसन्ततेरभावे सति भर्त्तृगामि, न पुनर्मात्रादीनामित्यर्थः। आसुरराक्षसपैशाचविवाहसंस्कृताया भार्य्याया धनं मातापित्रोर्भवतीत्यर्थः। यत्तु कात्यायनेनोक्तम्।

"बन्धुदत्तन्तु बन्धूनामभावे भर्त्तृगामि तत्"—इति।

तदासुरादिविवाहसंस्कृतस्त्रीविषयम्। अतएवोक्तं तेनैव,—

"आसुरादिषु यल्लब्धं स्त्रीधनं पैतृकं स्त्रियाः।
अभावे तदपत्यानां मातापित्रोस्तदिष्यते"—इति।

भर्त्रादिभिर्दत्तमपि शुल्काख्यं स्त्रीधनं सोदरएव गृह्णाति। तथाच गौतमः। "भगिनीशुल्कं सोदर्य्याणामूर्ध्वं मातुः"—इति। सोदर्य्याणामभावे मातुर्भवतीत्यर्थः। यत्पुनस्तेनैवोक्तम्। "स्वञ्च शुल्कं वोढ़ाऽर्हति"—इति। तच्छुल्कग्रहणानन्तरं दैवात् प्राक् मृतायां द्रष्टव्यम्। अतएव याज्ञवल्क्यः,—

"मृतायां दत्तमादद्यात् परिशोध्योभयव्ययम्"—इति।

यत्तु कन्यायै मातामहादिभिर्दत्तं भूषणादि, तदपि सोदरा एव गृह्णीयुः तथाच बौधायनः,—

"रिक्थं मृताया गृह्णीयुः कन्यायाः सोदराः समम्।

तदभावे भवेन्मातुस्तदभावे पितुर्भवेत्"—इति।

अनपत्यपुत्रिकाधनमपि सोदरो गृह्णाति। तथाच पैठीनसिः"—

"प्रेतायां पुत्रिकायान्तु न भर्त्ता दायमर्हति।

अपुत्रायां कुमार्य्याञ्च भ्राता तद्ग्राह्यमित्यपि"—इति।

पुत्रिकायां पितुः पश्चादौरससद्भावे स एव गृह्णीयात् न भर्त्ता। यत्तु मनुवचनम्,—

"अपुत्रायां मृतायां तु पुत्रिकायां कथञ्चन।

धनं तु पुत्रिकाभर्त्ता हरेच्चैवाविचारयन्"—इति।

तत्पश्चादुत्पन्नभ्रात्रभावे वेदितव्यम्। यत्तु क्वचिदनपत्यं स्त्रीधनं स्वस्रीयादीनां भवतीत्युक्तं बृहस्पतिना,—

"मातृष्वसा मातुलानी पितृव्यस्त्री पितृष्वसा।

श्वश्रूः पूर्व्वजपत्नी च मातृतुल्याः प्रकीर्त्तिताः॥

यदासामौरसो न स्यात् सुतो दौहित्र एव च।

तत्सुतो वा धनं तासां स्वस्रीयाद्याः समाप्नुयुः"—इति।

अस्यायमर्थः। ब्राह्मादिविवाहेषु भर्त्तुरभावे, आसुरादिषु मातापित्रोरभावे, मातृष्वस्रादीनां धनं यथाक्रमं मातृष्वस्रीयाद्या गृह्णीयुः। क्वचिज्जीवन्त्याः सप्रजाया अपि पत्न्या धनं भर्त्ता गृह्णीयादित्याह याज्ञवल्क्यः,—

"दुर्भिक्षे धर्म्मकार्य्ये च व्याधौ संप्रतिरोधके।

गृहीतं स्त्रीधनं भर्त्ता न स्त्रियै दातुमर्हति"—इति।

संप्रतिरोधके बन्दिग्रहादौ स्वकीयद्रव्याभावे स्त्रीधनं गृहीत्वा पुनस्तस्यै न दद्यात्। प्रकारान्तरेण गृहीतं पुनर्दद्यादेव। तथाच कात्यायनः,—

"न भर्त्ता नैव च सुतो न पिता भ्रातरो न च।

आदाने वा विसर्गे वा स्त्रीधने प्रभविष्णवः॥

यदि त्वेकतरोऽप्येषां स्त्रीधनं भक्षयेद्बलात्।

सवृद्धिकं प्रदाप्यः स्याद्दण्डश्चैव समाप्नुयात्॥

तदेव यद्यनुज्ञाप्य भक्षयेत्प्रीतिपूर्व्वकम्।

मूल्यमेव स दाप्यः स्याद् यद्यसौ धनवान् भवेत्"—इति।

देवलोऽपि,—

> "वृत्तिराभरणं शुल्कं लाभश्च स्त्रीधनं भवेत्।
> भोक्त्री तत् स्वयमेवेदं पतिर्नार्हत्यनापदि ॥

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अविभाज्यद्रव्यमाह याज्ञवल्क्यः,—

> "पितृद्रव्याविरोधेन यदन्यत् स्वयमर्जितम्।
> मैत्रमौद्वाहिकञ्चैव दायादानां न तद्भवेत् ॥
> क्रमादभ्यागतं द्रव्यं हृतमभ्युद्धरेत्तु यः।
> दायादेभ्यो न तद्दद्यात् विद्यया लब्धमेव च"—इति।

पितृद्रव्याविरोधेन यत् स्वयं कृष्यादिना उपार्जितं, यच्च विद्यादिना लब्धं, विवाहाच्च यल्लब्धं, तद्भ्रात्रादीनां न भवेत्। यत्पित्रादिक्रमायातं चौरादिभिरपहृतमन्यैरनुद्धृतं द्रव्यं पुत्राणां मध्ये यः कश्चिदितराभ्यनुज्ञयोद्धरति, तत्तस्यैव भवति। क्षेत्रं तु तुरीयांशमेवोद्धर्त्ता गृह्णाति शेषं तु सर्वेषां सममेव। तथा शङ्खः,—

> "पूर्वनष्टान्तु यो भूमिं यः कश्चिदुद्धरेत् श्रमात्।
> यथाभागं लभन्तेऽन्ये दत्त्वांऽशन्तु तुरीयकम्"—इति।

तथा विद्ययाऽध्ययनादिना लब्धमपि स्वस्यैव भवति। पितृद्रव्याविरोधेनेति सर्वत्र शेषः। अतएव मनुः,—

> "अनुपघ्नन् पितृद्रव्यं श्रमेण यदुपार्जयेत्।
> दायादेभ्यो न तद्दद्यात् विद्यया लब्धमेव च"—इति।

श्रमेण कृष्यादिना। पितृग्रहणमविभक्तोपलक्षणार्थम्। व्यासोऽपि,—

> "विद्याप्राप्तं शौर्यधनं यच्च सौदायिकं भवेत्।
> विभागकाले तत्तस्य नान्वेष्टव्यं च रिक्थिभिः"—इति।

अविभाज्यविद्याधनस्य लक्षणमाह कात्यायनः,—

> "परभक्तोपयोगेन प्राप्ता विद्यान्यतस्तु या।
> तया प्राप्तं धनं यत्तु विद्याप्राप्तं तदुच्यते ॥
> उपन्यस्ते तु यल्लब्धं विद्यया पणपूर्वकम्।
> विद्याधनं तु तद्विद्यात् विभागे न नियोज्यते ॥
> शिष्यादार्त्विज्यतः प्रश्नात् सन्दिग्धप्रश्ननिर्णयात्।
> स्वज्ञानशंसनाद्वादात् लब्धं प्राध्ययनाच्च यत् ॥

परं निरस्य यल्लब्धं विद्यातो द्यूतपूर्वकम् ।
विद्याधनं तु तद्विद्यात् न विभाज्यं बृहस्पतिः ॥
सन्निविष्टे हि धर्मोऽयं स्वस्यादयत्राधिकम्भवेत् ।
विद्याबलकृतञ्चैव यान्यत्किञ्चिदुपार्जितम् तथा ॥
एतद्विद्याधनं प्राहुः सामान्यं यदतोऽन्यथा''—इति ।

अतो विद्याधनादन्यथाभूतमविभक्तपित्रादिद्रव्योपयोगप्राप्तं तदविभक्तानां सामान्यं साधारणमिति यावत् । क्वचिद्विद्याप्राप्तमपि धनं विभाज्यमित्याह नारदः,—

"कुटुम्बं बिभृयात् भ्रातुर्यो विद्यामधिगच्छतः ।
भागं विद्याधनात्तस्मात् स लभेताश्रुतोऽपि सन्"—इति ।

कात्यायनेनापि,—

"कुले विनीतविद्यानां भ्रातृणां पितृतोऽपि वा ।
शौर्य्यप्राप्तं तु यद्वित्तं विभाज्यं तत् बृहस्पतिः"—इति ।

अविभक्तस्य कुले पितृव्यादेः पितृतोऽपि वा प्राप्तविद्यानां यद्धनं शौर्य्यादिना प्राप्तं विद्ययैव प्राप्तं, तद्विद्याधनं विभाज्यमिति । पितृद्रव्यार्जितेनार्जिते धने भागद्वयमेकस्याह वसिष्ठः । "येन चैषां यदुपार्जितं स्याद्द्व्यंशमेव लभेत"—इति । यत्तु,—

"सामान्यार्थसमुत्थाने विभागस्तु समः स्मृतः"—इति ।

तद्विद्येतरकृष्याद्युपार्जितधनविषयम् । अविभाज्यविद्याधने अर्जकेच्छया अंश-माह गौतमः । "स्वयमर्जितं चैव वेद्येभ्यो वैद्यः कामं तद्यात्"—इति । इच्छाभावे त्वाह नारदः,—

"वैद्यो वैद्याय नाकामो दद्यादंशं स्वतो धनात् ।
पितृद्रव्यं समाश्रित्य न चेत्तद्धनमाहृतम्"— इति ।

अवैद्याय सकामोऽपि न दद्यात् । तदाह कात्यायनः,—

"नाविद्यानान्तु वैद्येन देयं विद्याधनं क्वचित् ।
समविद्याधिकानान्तु देयं वैद्येन तद्धनम्"—इति ।

विद्याप्राप्तधनवत् शौर्य्यादिप्राप्तमपि धनमविभाज्यमित्याह सएव,—

"शौर्य्यप्राप्तं विद्यया च स्त्रीधनं चैव यत् स्मृतम् ।
एतत्सर्व्वं विभागे तु विभाज्यं नैव रिक्थिभिः ॥
ध्वजाहृतम्भवेद यत्तु विभाज्यं नैव तत् स्मृतम्"—इति ।

ध्वजाहृतस्य लक्षणं तेनैवोक्तम्,—

"संग्रामादाहृतं यत्तु विद्राव्य द्विषतां बलम्।
स्वाम्यर्थं जीवितं त्यक्त्वा तद्ध्वजाहृतमुच्यते"—इति।

बृहस्पतिरपि,—

"पितामहपितृभ्यां च दत्तं मात्रा च यद्भवेत्।
तस्य तन्नापहर्त्तव्यं शौर्य्यभार्य्याधनं तथा"—इति।

शौर्य्यप्राप्तधनस्वरूपं च कात्यायनेन दर्शितम्,—

"आहत्य संशयं यत्र प्रसभं कर्म्म कुर्वते।
तस्मिन् कर्म्मणि तुष्टेन प्रसादः स्वामिना कृतः॥
तत्र लब्धं तु यत्किञ्चित् धनं शौर्य्येण तद्भवेत्"—इति।

पित्रादिद्रव्योपजीवनेन विद्याप्राप्तधनवत् शौर्य्यप्राप्तधनेऽप्यर्ज्जकस्य भागद्वयमाह व्यासः,—

"साधारणं समाश्रित्य यत्किञ्चिद्वाहनायुधम्।
शौर्य्यादिनाप्नोति धनं भ्रातरस्तत्र भागिनः॥
तस्य भागद्वयं देयं शेषास्तु समभागिनः"—इति।

VIVADA CHINTAMANI.

THE LAW OF INHERITANCE.

Of Partition.

The period and rule of partition of heritage.

1. The *primary** period of partition of heritage is declared by Manu : "After the death of the father and the mother, the brothers, being assembled, may equally divide among themselves the paternal estate ; but they have no power over it while their parents are living."

Explanation.

2. *Equally* means in equal proportions ; no deduction of a twentieth part being allowed for the eldest son, and so forth.

A deduction of a twentieth part of the heritage of the eldest son, &c. Implies inequality.

3. While treating of heritage among sons, after their father's demise, Manu has allowed a deduction of a twentieth part (for the eldest), and so forth.

4. Then how can there be equal partition of heritage among the sons ?

For what eldest son the additional share is allowable.

5. Let not such an objection be raised. For the deduction of a twentieth part, and so forth, is allowed in the case of such eldest son as is possessed of good qualities, or desires to receive the additional share.

Property, to which the father has the sole right, to be divided only at his pleasure.

6. Property over which the father has an independent right shall be divided at his pleasure only, while he is living. Therefore, his demise is essential to the partition of the abovementioned property. But what is the necessity for the demise of the mother ? She has no right whatever over it.

Sons are not independent as long as their father and mother live.

7. When treating of the partition of heritage, Sankha says that sons are not independent during the lifetime of their father. In like manner they are not so, as long as their mother lives From this it may be assumed that she has a control over the estate.

The text done not denote a mother's right.

8. No, for the preceding text is merely indicative of the praise of such a mother as possesses good qualities.

Dependence as to partition of an estate upon a person who has no right over it, is inconsistent.

9. How can dependence, with regard to the partition of an estate, upon a person who has no right over it, be consistent with reason ?

* In the original i e , the translation of Prosonno Coomar Tagore which is reprinted we have the word 'proper.'

10. This is no argument at all. For the term paternal being a conjunctive compound, means something belonging to both father and mother. It therefore also relates to maternal property. Hence the demise of the mother is necessary to the partition of her estate. With this view, Manu has made the foregoing provision.

Paternal means something belonging to both father and mother: the demise of the mother is necessary for the partition of her estate.

11. But it may again be urged that maternal property goes to daughters after the death of the mother, and, on failure of daughters, to their sons. Sons have no right to take it.

According to Narada, sons have no right to maternal property.

According to Narada: "Let sons divide the wealth when their father dies. Let daughters divide their mother's wealth, and, on failure of daughters, their* issue"

12. This text in no way debars any one from inheriting the maternal estate. Manu has spoken of joint succession in the following passage:† "On the death of the mother, let all the uterine brothers and the uterine sisters equally divide the maternal estate."

But, according to Manu, all the uterine brothers and sisters divide the maternal estate.

13. Therefore, brothers and sisters shall jointly divide the maternal estate.

Explanation.

14. From what has been said above, it is evident that the property which is independently held by the father, shall be divided after his demise, but in his lifetime it must remain intact.

Property independently held by the father shall not be divided in his lifetime

15. Sankha confirms this by saying that "partition does not take place, if the father do not desire it, when he is old, or in his dotage, or is afflicted with disease."

Sankha on the point.

16. *Dotage* means weakness of the mental powers.

Dotage defined.

17. If the father be alive and be without the above-mentioned complaints, and also willing, the partition is admissible. This will hereafter be explained.‡

When partition by a father is admissible.

18. Or, after the demise of their father, the sons may live together, making the eldest the chief manager.

Of united sons, the eldest may be the manager.

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* In the original we have the word 'male.'

† I have not changed the original. But the correct translation of this paragraph is as follows: From the indication that daughters and failing them daughter's sons have right in the maternal estate, it may be objected that the son has no right to inherit. But this is not correct, because the text by prescribing that the inheritance should go to another does not exclude (the son). Therefore (Manu says).

‡ Paragraphs 15, 16, 17 are wrongly translated. The correct translation is as follows: On that matter Sankha says: "There may be partition when the father is without desire, too old, when his intellect is perverted or when he is afflicted with long standing disease." 'When the intellect is perverted' means 'when the mind has gone wrong.' It is thus intended to be laid down that when the father is a capable person, partition can take place only at his will.

Manu on the point.

19. Manu confirms this by saying that "the eldest brother may take entire possession of the patrimony: and the others may live subject to him, as to their father;" or make him chief who is capable of business.

Narada on the same.

20. Narada speaks on the same subject:* "Let the eldest brother, like a father, support all the others, who are willing *to live together without partition*; or even the youngest brother, *if all assent*, and if he be capable of business; capacity for business is the best rule in a family."

The estate may be divided for religious purposes.

21. Or let them divide the estate for the sake of performing religious duties.

Manu on the point.

22. Manu confirms this by saying—"Either let them thus live together, or, if they desire *separately* to *perform* religious rites, let them live apart: since religious duties are multiplied in separate houses, their separation is therefore legal."

Vrihaspati on religious duties.

23. How are religious duties multiplied by partition of property? VRIHASPATI speaks on this subject: "A single performance of the ceremonies of forefathers and of the worship of the deities and Brahmins may answer for brothers, who reside together and eat food dressed in the same place. In a family, the members of which live apart, these duties are separately performed in the house of each of them."

How partition multiplies religious performances.

24. Divided estates being the exclusive property of every heir, each may perform the ceremonies, sacrifices, &c., according to his own choice, without reference to the others. Hence partition multiplies religious performances.

OF PARTITION DURING THE LIFETIME OF THE FATHER.

When division may take place.

25. Narada speaks of the time of division among sons:—"When the mother is too aged to bear more sons, and all the sisters have been given away *in marriage*, and the father either refrains from pleasures, or withdraws from worldly concerns."†

Yajnavalkya on the division of self-acquired property.

26. Yajnavalkya says: "When the father makes a partition, let him separate his sons at his pleasure and either *dismiss* the eldest with the largest share, or *if he choose* all may be equal shares."

Explanation.

27. *Pleasure* applies in the case of self-acquired property.

* 'So says Narada' would be more correct.

† The following should appear after this: Prattashu means given in marriage; Nibretteramane means when the father has lost sexual power: Uparatasprihe means devoid of worldly desires.

28. Vishnu says, "when a father separates his sons from himself, his self-acquired property shall be divided at his choice." Vishnu on the point.

29. *Self-acquired property* means such as has been gained by self-exertion. Explanation.

30. Likewise, any ancestral property recovered by the father shall, according to Manu, be considered as his self-acquired property. Because it is understood to be recovered without the aid of the ancestral property. But if it be recovered with the aid of the patrimony, it must be considered as common property. Ancestral property recovered by the father when to be considered as self-acquired and when as common.

31. Such property as is acquired or recovered by the father without the aid of the ancestral estate, shall be divided equally or unequally, or not divided at all, at his pleasure. Property acquired or recovered by the father without the aid of the ancestral estate may be divided at his pleasure.

32. The partition of such property depends entirely on his own will, for the sons have no ownership therein. Partition of such property depends entirely on his own will.

33. Manu says that if a father, "by his own efforts, recover a *debt or property unjustly detained*, which could not be recovered before *by his father*, he shall not, unless by his free will, put it into parcenary with his sons, since in fact it was acquired by himself." A debt or property recovered by the father shall be divided according to his free will.

34. The meaning of the above is that if any property be taken away or seized by a stranger and recovered by the father, such property, even if it be ancestral, and also that which has been acquired by his own exertions, may be divided among his sons, if he choose, but not against his will. Explanation

35. The father has full dominion over the property of his father, which, being seized is recovered by him by his own exertions, or over that which is gained by him through skill, valour, or the like. He may give it away at his pleasure, or he may distribute it. On failure of the father, the sons are entitled to an equal share of it. Over what property the father has full dominion

36. *Seized* means taken away by a stranger and not recovered by the grandfather through inability, but recovered by the father. Such property and also that which is acquired by him through his ability may be distributed or given away at his pleasure. Explanation.

How property gained without making use of the ancestral estate, &c., shall be disposed of.

37. From what has been said, it is plain that any property gained by skill or exertion without making use of the ancestral estate, or any other means, and recovered without using the paternal estate, shall be divided or given at the pleasure of the father.

The power of the father over such property.

38. The father has full power to give a larger portion of the abovementioned property to his eldest son, or to take the greater portion of it for his own use, f he choose.

Self-acquired property may be divided at the pleasure of the father.

39 The unequal partition, referred to by Yajnavalkya, applies in the case of the aforementioned self-acquired property. "When the father makes a partition, let him separate his sons *from himself* at his pleasure, and either *dismiss* the eldest with the largest share, or *if he choose* all may be equal sharers."

Explanation.

40. The abovementioned text relates to property over which the father has full dominion, for it occurs on the subject of self-acquired property.

When the wives of the father must have equal shares with the sons.

41. He (Yajnavalkya) adds a special rule in the case of equal partition: "When the father makes an equal partition among his sons, his wives must have equal shares *with them*, if they have received no wealth either from their lord or from his father."

Explanation.

42. *Equal partition* means that the wives who have received separate property (*stridhana*) should be made equal sharers with the other wives.* Where the father, giving smaller shares to his sons, takes the largest portion for his own use, he must give equal shares to his wives out of his own property.

Equal shares shall be given to his wives, when the father makes an equal partition among his sons.

43. It is for this reason specially declared that equal shares shall be given to his wives, when the father makes an equal partition among his sons.

The father, on becoming indigent, may, in a certain case, resume his sons' portions.

44. Harita says. "If the father, after giving a small portion of the estate to his sons, and reserving the greatest part of it for his own use, become indigent, he may take back the portions given to them."

Explanation.

45. *Indigent* means poor.

This text relates to self-acquired property.

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* The correct translation is as follows: In this as the father is the person who takes the partition, the word wife means his wife. 'M[illegible] have equal shares' means if to any of the wives have been given Str[illegible] the other wives should be made owners of equal wealth by the father.

46. Again: "Let a father who makes a partition reserve two shares for himself." **On a partition a father may take two shares.**

47. Sankha and Likhita say, if he (the father) be an only son, let him take two shares and the principal of the bipeds and quadrupeds. A bull shall be given to the eldest son, and a house, which is not the father's place of residence, to the youngest. **Allotments of sons.**

48. The conclusion is that the father shall take two shares and the best of the slaves and cattle for his own use. A bull shall be given to the virtuous eldest son, and a house, other than that occupied by the father, to the youngest, if he have good qualities **Explanation.**

49. The father shall get a double share, when he is an only son of his father; for the above cited texts, being from the same source, may, consistently with brevity, be understood as referring to the same matter. **When the father shall get a double share.**

50. The foregoing rule relates ouly to ancestral property. The abovementioned condition (if he be an only son) is not essential in the case of the self-acquired property of the father.* **The condition (if the father be the only son) is not essential in the case of self-acquired property.**

51. *Only* means eldest, not one in number. Otherwise the words, eldest and youngest, would be inconsistent. **Explanation.**

52. Therefore, the conclusion is that the virtuous eldest and youngest sons shall have the bull and house respectively, besides equal shares with the other sons; and the father shall have two shares, with the aforementioned deductions **What additional property the virtuous eldest and youngest sons shall have.**

53. Apastamba says, that the father, having satisfied the eldest son with one article, shall give equal shares to his living sons. **How the father shall make partition, according to Apastamba.**

54. From the word *living* it is to be understood that the wife of a deceased son shall have no share of the heritage, but her son is entitled to a share; because a son is said to be the soul of the father, and there is a text, by virtue of which a person is heir to his grandfather. **The son, but not the wife, of a deceased son shall share in the heritage**

55. In the *Ratnakara*, it is said that the word *living* applies to the father, and not to sons. This causes inconsistency, for the father, who makes the partition, is understood to be living. It is therefore unnecessary to apply the word *living* to the father. *Principal wealth* signifies the best of all kinds of wealth. **Explanation.**

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* 'Which is divisible at his pleasure' should be added here.

Devala on the precedence of sons.

56. Devala speaks of the precedence of sons: In classes other than the usual four, "*the precedence of sons is regulated* by the goodness of their dispositian; and of twins *the eldest is he* who is first actually born. Among twins, to him, whose face *kinsmen* first see after his birth, belong *the privileges of* male offspring, the right of performing obsequies for his father, and *the honours of* primogeniture."

The marks of the eldest son.

57. The forefathers of that son are exalted, who is born of parents of the same class, and whose face is first seen by kinsmen, and who is also senior in birth.

The first male offspring of a father and mother of the same class is the eldest son.

58 The conclusion, therefore, is that the first male offspring of a father and mother of the same class is the eldest son. Seniority of birth belongs to such a son, even if he be younger than the other sons of his father by his wives of different classes.

Manu on the point.

59 Manu confirms this by saying: "As between sons born of wives equal in class *and* without *any other* distinction, there can be no seniority in right of the mother; but the seniority, ordained by law, is according to birth." Therefore, in the case of wives taken from different classes even the last born son, by a wife of an equal class becomes senior in birth.

How an eldest brother defrauding his younger brother shall be punished.

60. Manu says that "an eldest brother, who from avarice shall defraud his younger brother, shall forfeit *the honours of* his primogeniture, be deprived of his own share, and pay a fine to the king."

What allotments the eldest, middlemost, and youngest son are to receive.

61. "The portion deducted for the eldest is a twentieth part of the heritage with the best of the property; for the middlemost, half of that, or a fortieth, for the youngest, a quarter of it, or an eightieth."

What may be taken by the first born, if transcendently learned and virtuous.

62. "Of all the property collected, let the first born, *if he be transcendently learned and virtuous*, take the best article, whatever is most excellent in its kind, and the best of ten *cows or the like*"

What article shall be allotted to the eldest, according to Baudhayana.

63. Baudhayana says, one of the ten articles of the same kind shall be allotted to the eldest son, and his other brothers shall have equal shares with him. The sons are entitled to an equal share from their ancestral estate; but if one of them be transcendently learned and virtuous, he shall receive a greater portion of it.

64. The meaning of the above is that the eldest son shall receive a twentieth part of the ancestral estate besides his own share, if he be *very* qualified, but if he be *somewhat* qualified, he shall receive something

65. Devala says "let the tenth part of the heritage be given to the eldest, who conducts himself according to law."

The virtuous eldest son gets a tenth part of the heritage

66. According to Halayudha and the *Parijata* this text is applicable in a case where the eldest son maintains the sacred fire, and is versed in the Shastras, and the others are possessed of no good qualities.

Where this text is applicable

67. Vrihaspati says: "Sons, to whom equal, less, or greater shares have been allotted by their father, should maintain such distribution; otherwise they shall be deemed sinful."

Sons should maintain the distribution made by their father.

68. This relates to the self-acquired property of the father.

This relates to the father's self-acquired property.

69. Manu says: "If, among undivided brothers *living* with their father, there be a common exertion for common gain, the father shall never make an unequal division among them."

In what case the father should not make unequal division among his sons

70. This text is applicable in the case of property which is gained by the equal exertions of all the brothers. There is therefore no inconsistency.

Where this text is applicable.

71. Vrihaspati says that "the eldest, *or he who is pre-eminent* by birth, science, and virtuous qualities, shall receive two shares of the heritage, the rest shall share alike: but he is *venerable*, like their father."

What shares, according to Vrihaspati, the virtuous eldest son shall receive.

72. This text refers to such eldest brother as supports his younger brothers like their father.

Where this text is applicable.

73. All the sons shall receive equal shares of their paternal property; but such of them as are learned and endowed with good qualities are entitled to a greater share.

What sons are entitled to a greater share

74. Vyasa says, "if a co-heir acquire wealth by employing the common horses, elephants, cars, weapons, or any other articles, and by his own valour, his brothers shall get a share of it; but he is entitled to a double share."

Where the brothers of a co-heir shall get a share of the wealth acquired by him.

75. The meaning of the above is that if a co-heir acquire any thing by his valor but with help from the common stock, he shall receive a double share of it.

Explanation.

76. Vasishtha says, "he among them, by whom property is acquired through his own sole labour, shall take a double share of it."

What co-heir shall take a double share.

77. This text is the same as the above.

Explanation.

When all the brothers shall receive equal shares.

78. Yajnavalkya says, "if the common property be improved, all the brothers shall receive equal shares."

How the shares of grand-sons shall be regulated.

79. "The shares of grandsons shall be regulated according to those of their fathers."

Explanation.

80. *If the common property*, &c., signifies that even if any co-heir improve it by commerce, agriculture, or the like, he shall not receive a greater share It is to be here understood that this is applicable in a case where the other co-heirs have similarly augmented the common property; otherwise it will be inconsistent with the text of Vasishtha.

GRANDSONS OF DIFFERENT FATHERS.

What shares the sons of deceased brothers living together, who mprove the common property, shall receive.

81. If, on the death of brothers living together, their sons improve the common property by agriculture or the like, they shall not separately receive shares, but only the shares of their respective fathers

The manager of the family business to get something more than his own share.

82. Narada says. "He who manages the family business shall be supplied by his brothers or cousins with food, raiment, and beasts of burden." He who, being employed for the benefit of the family, promotes its temporal interests by agriculture, commerce, or the like, shall have equal shares with the co-heirs Better food, clothes, and so forth, shall be given to him by his co-heirs in consideration of his exertions.

A trifle to be given to a brother, who has a competence, and relinquishes his share of joint property.

83. Manu says, "if any one of the brothers has a competence from his own occupation and wants not the property, he may debar himself from his share, some trifle being given him in lieu of maintenance"

His co-sharers shall make him compensation out of their own shares, on division.

84. The brothers of that man, who is able to support himself by his own occupation and labour, and does not require his ancestral property but relinquishes it, shall give him compensation out of their shares of the property which they may divide among themselves.

Explanation.

85. Halayudha says, the purport of the preceding text of Narada is the same with that of Manu, but in the *Prakasakara* the latter is thus explained.

An indolent partner shall not be allowed to enjoy the profit.

86. If, when partners are engaged in any work for the acquisition of wealth, one of them be indolent, he shall not be allowed to enjoy the profit; but his share of the principal must be given to him.

87. Katyayana says, "should a brother (*anuja*) die before partition, his share shall be allowed to his son, provided he had received no fortune from his grandfather That son's son shall receive his father's share from his uncle or his son; and the same proportionate share shall be allowed to all the brothers, according to law. Or, *if that grandson be also dead*, let his son take the share; beyond him, succession stops." Who shall receive the share of a dead son.

88 *Anuja* implies a brother *His son* signifies the son of a deceased brother. *No fortune* means no portion. What share shall the brother's son receive? Explanation.

89 The reply of the sage to this question is, his father's share. The brother's son shall receive the share of his father.

90. *His son* in the latter text signifies the great-grandson of him whose estate is divided. Hence, the estate of the owner shall be divided according to the number of his sons. Consequently, the share which is allotted to a son shall be received by his son or grandson but not by his great-grandson. This is applicable where the partners live together. The wife of a deceased son shall not therefore be entitled to a share, because such is not the rule Explanation.

91 Devala says, "partition of heritage among undivided parceners, and a second partition among divided relatives living together *after re-union*, shall extend to the fourth in descent: this is a settled rule." How far partition of heritage shall extend.

92. The partition of heritage shall extend from the original owner of the estate to his descendants in the fourth degree. This rule is also applicable where the divided relatives are living together after re-union, because the peculiar state of living together in the abovementioned text is mentioned. It shall extend from the original owner of the estate to his descendants in the fourth degree.

93. Vasista says: "A share of the heritage shall be allotted with the brothers to the widows who have no offspring, but are supposed pregnant, *to be held by them* until they severally bear sons." A share of the heritage shall be allotted to the widows who are supposed to be pregnant.

94 By *widows* are meant the wives of the deceased brothers. A share must be given to a brother's widow, who is likely to bear a son and, after her delivery, that share belongs to her son; but if no son be brought forth, the said share shall be taken by her husband's brothers. Explanation.

95 Vrihaspati says on the same subject: "on the death of the father, the mother (*janani*) has a claim to an equal share with her own sons; mothers (*matara*) take the same share; and the *unmarried* daughters each a fourth of a share." Vrihaspati on the shares of mother, step-mother, and unmarried daughters.

Explanation.

96. *Mother* (*janani*) means one who has male issue. *Mothers* (*matara*) means stepmothers who have no male issue. These females shall have equal shares with the sons. The *unmarried sisters* shall receive a fourth part of the share of each of their brothers for their marriage.

Provision for the investiture and other rites of younger brothers

97. Narada says, "For any of the brothers, whose investiture and other ceremonies had not been performed by the father in due order, the other brothers shall perform those ceremonies out of the paternal estate."

How the expense of their ceremonies shall be defrayed if no property of the father remain.

98. "Or, if no property of the father remain, the investiture and other ceremonies must be performed out of their own shares, by brothers, for whom those ceremonies have already been performed."

Childless wives of the father and paternal grandmothers are equal sharers.

99. Vyasa says: "Even childless wives of the father are pronounced equal sharers, and so are all the paternal grandmothers, who are declared equal to mothers."

Yagnyavalkya on the step-mother's share

100. Yajnavalkya says, "of heirs dividing after the death of the father, let the step-mother also take an equal share."*

OF EFFECTS UNDISTRIBUTED.

An equal distribution to be made on the discovery of any fraud or mistake in the partition.

101. Katyayana says: "Recovering what has been embezzled by any one *of the co-heirs*, let sons, after the death of the father, divide it equally with their brothers. "If the parceners have secreted part of the assets from each other, or if any mistake have been made in the partition, on a subsequent discovery there must be an equal division of what has been restored (*or ill distributed*): so Bhrigu has ordained."

OF A CO-HEIR RETURNING FROM ABROAD.

Who shall receive the share of a man who has left his country.

102. Vrihaspati says: "If a man leave the common family and reside in another country, his share must no doubt be given to his male descendants when they return. Be the descendant the third, or fifth, or even seventh in degree, he shall receive his hereditary allotment on proof of his birth and name."

Where this text is applicable.

103. This text relates to those who return from a foreign country.

To whom the kinsmen of the proprietor of the land must surrender it.

104. "To the lineal descendants, when they appear, of that man whom the neighbours old inhabitants know by tradition to be the proprietor, the land must be surrendered by his kinsmen."

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* Step-mother here should be mother which word may include the step-mother.

OF PERSONS EXCLUDED FROM INHERITANCE.

105. Vrihaspati says on this subject: "Though born of a woman equal in class, one who is not virtuous shall have no claim to the paternal estate; it is ordained to devolve on those learned kinsmen who offer the funeral cake to the deceased." A son who is not virtuous has no claim to the paternal estate.

106. Manu says that "all those brothers who are addicted to any vice, lose their title to the inheritance." Brothers addicted to vice lose their title to inherit.

107. *Addicted to any vice* means devoted to any forbidden acts. Explanation.

108. Sankha says: "of him who has been formally degraded, the right of inheritance, the funeral cake, and the libation of water, are extinct." The right of inheritance of degraded persons is extinct.

109. *Formally degraded* means "excluded from the joint libation of water."* Such a person is not competent to inherit paternal property and to offer the oblation of food and libation of water. Explanation.

110. Manu says: "Impotent persons and outcasts, persons born blind or deaf, madmen, idiots, the dumb, and such as have lost the use of a limb, are excluded from a share of the heritage. Persons excluded from a share of the heritage, according to Manu.

111. "But it is just that the heir who knows his duty should give all of them food and raiment *for life* without stint, according to the best of his power. he who gives them nothing, sinks assuredly *to a region of punishment*. Food and raiment should be given to such persons for life.

112. "If the eunuch and the rest should at any time desire to marry, *and if the wife of the eunuch should raise up a son to him by a man legally appointed, that son and* the issue of such as have children, shall be capable of inheriting." The issue of such of them as have children may inherit.

113. *Those who have lost the use of a limb* signifies those who have been deprived of a hand, a leg, or any other member of the body. Such persons are not competent to perform ceremonies relating to the *Vedas* and *Smriti*. They are consequently not entitled to inherit paternal property. This is the correct meaning of the preceding text. But the offspring of all of them except the outcasts shall get the shares of their respective fathers in the inheritance. Persons deprived of a limb cannot perform ceremonies relating to the Vedas and Smriti, consequently cannot inherit.

114. Yajnavalkya says: "An outcast and his son, an impotent person, one lame, a madman, an idiot, one born blind, he who is afflicted with an incurable disease, and the like, must be maintained without any allotment of shares." What persons should be maintained without any allotment of shares.

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* The correct translation is excluded from common use of water on account of heinous offence.

Explanation.

115. *He who is afflicted with an incurable disease* means a person who is afflicted with leprosy or any such disease. A leper and the like are not competent to receive shares of their paternal estate.

But their sons, if not disqualified, shall inherit.

116. "But their sons, whether begotten in lawful wedlock, or procreated by a kinsman on the wife duly authorised, may take shares, provided they have no disability"

117. "Their daughters must be supported so long as they be not disposed of in marriage"

[illegible] be supported.

Explanation

118. Here the son of an outcast ' begotten in lawful wedlock" is understood to be born before the degradation of his father from the class But the other sons signify even those born after their fathers had become incompetent to inherit. *Daughters* mean female children. *Disposed of in marriage* means married

Their chaste childless wives must be maintained.

119. Yajnavalkya adds that "their childless wives, who preserve chastity, must be supplied with food and apparel ; but disloyal and traitorous wives shall be banished from the habitation." *Traitorous wives* signify such wives as try to administer poison, and so forth.

What sons, according to Narada, cannot inherit.

120. Narada says . "An enemy to his father, an outcast, and one who is addicted to vice, shall not inherit, though begotten by the deceased , much less if begotten on his wife by a kinsman legally appointed."

Explanation.

121 *An enemy to his father* means one who ill treats his father in his lifetime, or is averse to perform his obsequies when dead

Persons who cannot inherit are to be maintained.

122 "Those of the family who are afflicted with long and painful disease, an idiot, one who is insane, blind, or lame, should be maintained, but their sons are partakers of the inheritance"

Explanation.

123. *Long disease* means consumption, and the like. *Painful disease* signifies leprosy, and so forth. *Idiot* means a person not susceptible of receiving instruction.

Devala on the persons who cannot inherit.

124. Devala says "when the father is dead (*as well as in his lifetime*) an impotent man, a leper, a madman, an idiot, a blind man, an outcast, the offspring of an outcast, and a person wearing the token (*of religious mendicity*) are not competent to share in the heritage. Food and raiment should be given to them, excepting the outcast. But the sons of such persons, being free from similar defects, shall obtain their fathers' shares of the inheritance."

Explanation.

125. Here the word *dead* applies to that father who has lost the right of inheritance. *A person wearing the*

token of mendicity means a professed devotee.* *Defects* signify such failings as disqualify a person to receive his share

126. Vasishtha says: "They who have assumed another order, are excluded from participation."

Vasishtha on the exclusion of devotees.

127. *Another order* means the order "other than that of a housekeeper *or married man*."

Explanation

128 Katyayana says, that the son of a woman not married in regular order, and begotten on her by a kinsman† is not competent to inherit the paternal estate, and so is an apostate from a religious order

Katyayana on the point

129. Marriage in regular order is lawful. The son of a woman who was married contrary to the regular order‡ and who is of the same family with her husband, and a person who has forsaken the order of an ascetic, are not competent to receive a share. But a special provision has been made by Katyayana on behalf of the first

Explanation.

130. "But the son of a woman not married in regular order may inherit property, if his father and mother belong to the same class."

When the son of a woman not married in regular order may inherit.

131 The son of a woman who is not married in regular order and who belongs to the class of her husband is entitled to a share.

Explanation.

132. The summary of the above is this. a vicious person, one who is excommunicated from society for heinous crimes, an outcast, an impotent person, one who is incurably blind, or deaf, a madman, an idiot, a person who is dumb or destitute of limbs, a leper, an enemy to his father, one afflicted with consumption, an impostor, and a person who has relinquished his household order, are not competent to inherit property, but the sons of all of them except the outcast, if free from similar defects, are entitled to the inheritance.

Recapitulation.

* Correct translation of this paragraph is The word dead is merely an indicative adjective. A person wearing the token of mendicity means one who does so out of great hypocrisy

† Kinsman should be one of the same Gotra.

‡ The correct translation is · Marriage of a man with a woman of inferior caste is allowable according to the Shastras. The son of a woman who is married contrary to that order &c.

PERFORMANCE OF CEREMONIES FOR BROTHERS AND SISTERS.

Vyasa on brothers and sisters whose purificatory rites have not been performed.

133. Vyasa speaks of brothers and sisters, whose purificatory rites have not been performed. "For any of the brothers, whose investiture and other ceremonies had not been performed, the other brothers, of whom the sacraments have already been completed shall perform those ceremonies *out of the paternal estate* and for *unmarried* sisters, the sacraments shall be completed by their elder brothers, as the law requires"

Narada on the point.

134. Narada says "Or if no property of the father remain, the investiture and other ceremonies must be performed out of their own shares, by brothers, for whom those ceremonies have already been performed"

Yajnavalkya on the point.

135. Yajnavalkya says: "For any of the brothers, whose investiture and other ceremonies have not been performed *by the father*, those ceremonies shall be performed by brothers, of whom the sacraments have been completed; and for their sisters, by giving a fourth part of their respective shares."

According to Manu, the unmarried daughters by the same mother are to receive a fourth part of the share of each of their brothers.

136 Manu says "To the *unmarried* daughters *by the same mother*, let their brothers give portions out of their own allotments respectively, *according to the classes of their several mothers* let each give a fourth part of his own distinct share, and they, who refuse to give it, shall be degraded"

Explanation

137 *Their own allotments* means the allotments of the brothers. Therefore, the meaning is that a quarter of the share ordained for a brother of the class to which she belongs, should be given to a maiden sister.

Property sufficient to defray the expenses of the nuptials should be given.

138. Here the mention of a quarter is not essential. Property sufficient to defray the expenses of the nuptials should be given, for this is ordained by Vishnu.

How the expenses of marriage and other ceremonies, are to be defrayed.

139 "The expenses of the marriage and of other ceremonies of unmarried daughters, must be defrayed in proportion to the wealth inherited" The same opinion on the subject is held in the *Ratnakara* and by other writers.

OF PROPERTY SUBJECT TO PARTITION.

What property is divisible among heirs.

140. Katyayana says on this subject: "What belonged to the paternal grandfather, or to the father, and any thing

else, *appertaining to the co-heirs*, acquired by themselves, must all be divided on a partition among heirs."

141. *Acquired by themselves* means gained by the use of the paternal estate. Explanation.

142. Narada says: "What remains of the paternal inheritance, over and above the father's obligations and after payment of his debts, may be divided by the brothers, so that their father continue not a debtor. According to Narada, after payment of the father's obligations and debts.

143. *Over and above the father's obligations** signifies sums, of which payment had been promised by him. Therefore, after the payment of the father's debts, the residue should be divided among the co-heirs. Explanation.

OF PROPERTY NOT SUBJECT TO PARTITION.

144. Manu says: "Wealth, however, acquired by learning, belongs exclusively to him who acquired it; so does any thing given by a friend, received on account of marriage, or presented as a mark of respect *to a guest*. Property acquired by learning is not divisible.

145. *Any thing given by a friend* means any thing gained on account of friendship. *Received on account of marriage* will be hereafter explained. *Presented as a mark of respect* alludes to what is given to a guest on his arrival, to do him honor. Explanation.

146. Manu and Vishnu say that property, acquired by a brother through his labour, without using the paternal estate, shall not be given up without his assent. Nor property acquired without using the paternal estate.

147. *Labour* signifies service, and the like. The above is merely an instance; for whatever is acquired, without employing the common wealth or estate, shall be the absolute property of the acquirer. Explanation

148. Vyasa says: "What is given by the paternal grandfather, or by the father, as a token of affection, belongs to him *who receives it*, neither that, nor what is given by a mother, shall be taken from him. What a man gains by his own ability, without relying on the patrimony, he shall not give up to the co-heirs, nor that which is acquired by learning." Vyasa on property received as gifts or acquired without the aid of the paternal estate.

149. These two sorts of property are not liable to partition: property gained without the use of patrimony and that acquired by learning. Explanation.

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* Correct translation is Pitrodaya means sums promised by the father, such sums and debts of the father after having paid them the re[illegible] should be divided.

Property acquired by learning without any help from the common estate is not liable to partition.

150. In the *Prakasakara* it is stated that, if any property be acquired by learning without any help from the common estate, it is not liable to partition. But this opinion is not reasonable, for the two conditions laid down in the text become useless.*

According to the Ratnakara, and some writers.

151. In the *Ratnakara* and by some writers the same opinion is maintained.

A learned man not to give an unlearned co-heir a share of wealth independently acquired.

152. Here it may be argued that, according to the text of Narada "A learned man need not give a share of his own acquired wealth, without his assent, to an unlearned co-heir: provided it were not gained by him by using the paternal estate."

Where the text of Narada is applicable.

153. This text of Narada is applicable where the common estate is used for the purpose of acquiring learning as well as wealth.†

Property obtained by learning gained without using the paternal estate, is not divisible.

154. Consequently, if learning be acquired without using the paternal estate, and if any property be obtained by such learning, Katyayana, without mentioning whether the common estate has been used or not, says it is not divisible.

What is acquisition through learning.

155. "Wealth gained through science, which was acquired from a stranger, while receiving a foreign maintenance, is termed acquisition through learning."

Explanation

156. *From a stranger* signifies from such a person as bears no relation to his co-heirs.

Wealth gained by learned brothers who were instructed in the family is divisible.

157. The same sage observes, "yet Vrihaspati has ordained, that wealth shall be partible if it was gained by learned brothers who were instructed in the family by their their father, or by their paternal grandfather *or uncles*, and it is the same if the wealth was acquired by valour, *or with assistance from the family estate*."

Explanation

158. *Science* signifies both military and sacred science. [illegible]
shall be divided amongst the brothers, provided *that science* was gained from the father and other co-heirs.

Gains of science described

159. "What is gained by the solution *of a difficulty*, after a prize has been offered, must be considered as acquired through science and is not included in partition *among*

* The correct translation after *reasonable* is for the ordaining of two kinds of property would become meaningless.

† As well as wealth should be like in acquisition of wealth.

co-heirs. What has been obtained from a pupil, or by officiating as a priest, or for *answering* a question, or for determining a doubtful point, or through display of knowledge, or by *success in* disputation, or for superior *skill in* reading, the sages have declared to be the gains of science and not subject to distribution.

The same rule prevails in the arts.

160. Bhrigu says that "the same rule likewise prevails* in the arts, for there is excess above the price *of the common goods.*" What is obtained by the display of superior knowledge in a particular branch of science, is the acquisition of learning.

Explanation.

161. *By officiating as a priest* means "received as a fee or gratuity from a person who employs him to officiate at a sacrifice *Question* means any thing proposed. *What has been gained as a reward for display of knowledge* means what has been gained by one who shines in a learned assembly. *Superior reading* means proficiency in learning. *Display of superior knowledge in a particular branch of science* means proficiency in a particular branch of learning.

Wealth gained by science not to be shared with co-heirs, but with equals or superiors in learning.

162 Katyayana says, that "no part of the wealth, which is gained by science, need be given by a learned man to his unlearned co-heirs; but such property must be shared by him with those who are equal or superior in learning."

The cause of such division.

163 Here superior or equal learning is not the cause of the division of wealth, acquired by learning. Such a meaning renders the text obscure. If wealth, acquired by the learning of equals or superiors, be mixed together, it shall be divided; or, in other words, the mixture is the cause of such division.

In what case an ignorant man shall share in the wealth acquired by his learned brother.

164. Wealth, acquired by a learned man, whose family was supported, during his absence from home to acquire learning, by a brother, shall be shared with the latter, even if he be ignorant.

Summary.

165. The summary of the above is that, if a person acquire any property through learning, gained by obtaining maintenance from a stranger, it is called the acquisition of learning and is not liable to partition, provided his family were not maintained during his absence by any of his co-heirs.

Property gained by valour.

166. Katyayana says on this subject: "When *a soldier*, despising danger, performs a gallant action, and favor is shown to him by his lord pleased what that action,

* Arts should be among artisans.

whatever property is then received by him shall be considered as gained by valour. That and what is taken under a standard are declared not to be subject to distribution

Spoil under a standard defined.

167. "What is seized *by a soldier* in war, after risking his life for his lord and routing the forces of the enemy, is named spoil under a standard"

Wealth received on account of marriage.

168. The same [illegible] speaks of wealth which is received on account of [illegible] and which is not liable to partition :—

"What is received with a damsel equal in class, at the time of accepting her *in marriage*, let a man consider as wealth received with the maiden : it is the best means of supporting life. Wealth, received with the bride, shall be considered as a marriage gift. With it ceremonies may be performed."

Property acquired by unlearned brothers shall be equally divided among them.

169. On the allotment of shares : On this Manu ordains that, "if all of them (brothers), being unlearned, acquire property by their own labour, there shall be an equal division of that property for it was not the wealth of their father : this rule is clearly settled."

Explanation.

170. *Labour* means employment [illegible] in agriculture, and so forth. *Equal* means in just propo[illegible]on Therefore, the deduction of the twentieth part is [illegible] applicable in this case.

Gautama on the division of self-acquired property.

171. Gautama speaks of self-acquired property :—"The unlearned brothers shall take equal shares"

Vasishtha on the point.

172. Vasishtha says —"He among them who has made an acquisition, may take a double portion of it."

A co-heir, acquiring any property by the use of the common estate, shall have a double share.

173. If any among the co-heirs living in union acquire any property by the use of the common estate, employing himself in agriculture, he shall have a double share, and the others a share each.

Vyasa on the point.

174. Vyasa says, that "the brothers participate in that wealth which one of them gained by valour or the like, using any common property, such as a weapon or a vehicle : to him two shares shall be given, but the rest shall share alike."

Explanation.

175. *Or the like* signifies learning, which is the cause of self-acquired property, and which is to be considered as one of the means of acquiring such property as cannot be divided. From *the like* it is to be understood that valour and other qualities are employed. From the compound

word *(samas)* valour, and the like *(saurjaai)*, another quality is to be understood.

It has already been said that wealth, gained by valour and learning, is not liable to division, even if it be acquired by the use of the paternal estate But it is here said that the division of such wealth may take place: consequently this is an inconsistency. This is no argument. A supposed inconsistency.

The former text is applicable in the case of that wealth, which has been acquired by valour and learning, and of which Katyayana speaks Explanation.

But the latter text refers to learning of another description.

SEPARATE PROPERTY OF WOMEN.

176. In treating of the distribution of a woman's peculiar property, the nature of it should first be explained Six kinds of property of a woman.

It is thus described by Manu and Katyayana: "What was given before the nuptial fire, what was presented in the bridal procession, what has been conferred on the woman through affection, and what has been received by her from her brother, her mother, or her father, are denominated the six kinds of property of a woman"

177. *Six kinds of property* means that there cannot be a less number. Explanation.

178 Katyayana thus explains the first three kinds. "What is given to women at the time of their marriage, before the sacred fire, is denominated by sages their property bestowed before *(adhyagni)* the nuptial fire." What is property given before the nuptial fire.

What is given means what is presented by any person. Explanation.

179. In the same manner, "what a woman receives from the family of her parents, while she is being conducted to the house of her husband, is called the property of a woman given *(adhyabahanika)* at her nuptial procession." Property of a woman given at her nuptial procession.

Property of a woman given at her nuptial procession means any thing given by a person while she is proceeding the second time from the house of her father to that of her husband. Explanation.

180. Therefore, "any thing which is given to a woman by the mother or father of her husband in token of affection, and that which is given in return for her humble salutations, are called wealth gained by amiability." Wealth gained by amiability.

Amiability "consists in good temper, skill *in feminine arts* and the like." Amiability defined.

Third sort of exclusive property defined.

181. What is *given in token of affection*, and "by the father or mother of her husband, to a woman who is endowed with good temper and other amiable qualities, and who humbly salutes their feet, constitutes the third sort of exclusive property."

What a woman receives for her consolation when her husband takes a second wife is the seventh kind of peculiar property Yajnyavalkya on the point.

182. What is received from the mother, father, and brother, does not require any explanation. That which a woman receives for her consolation when her husband takes a second wife, is the seventh kind of peculiar property, and is thus explained by Yajnyavalkya:—"A woman, whose husband takes a second wife, shall have compensation for the supersession, if no property have been bestowed on her; but, if any have been given, she shall get so much as will make her share equal to that of the new bride."

Explanation

183. When a man takes a second wife, his first wife is said to be *superseded*.

What a man gives to his first wife at the time of his second marriage, is called *adhivedanika* or what is given to console her.

Vishnu on the property of a female.

184. Vishnu says:—"The property of a female is what her father, mother, son, or brother has given her; what she received before the nuptial fire, *or at the bridal procession*, or when her husband took a second wife, what her husband agrees should be regarded as her perquisites; what is received from his or her kinsmen as a gift subsequent to the marriage."

The perquisites of a woman described by Katyayana.

185. The six kinds of property here mentioned have already been explained. That which her husband agrees should be regarded as her perquisites, is thus explained by Katyayana.

"The small sums which are received by a woman as the price *or rewards* of household *duties, using household* utensils, tending beasts of burden, looking after milch cattle, taking care of ornaments of dress, or superintending servants, are called her perquisites."

Explanation.

The meaning of the above is that what the master of the house, pleased with the performance of the household business, gives to a woman, is her perquisite.

What is a gift subsequent.

186. "What is received by a woman after marriage, from the kinsmen of her lord, or those of her parents, is called a gift subsequent."

Explanation. of peculiar property.

187. The peculiar property of women is thus explained. *Saudayika* is the name by which the different kinds of the peculiar property of women are known.

Gift of affectionate kindred defined.

188. Katayayana says :—"That which is received by a married woman or a maiden, in the house of her husband or father, from her brothers or from her parents, is termed the gift of affectionate kindred."

Explanation.

By the words, *her husband*, are to be also understood his kindred.

Hence, the meaning is what a married woman or a maiden receives from her parents or their kindred or her husband's kindred is called the gift of affectionate kindred.

The means of subsistence &c., to be hereafter described.

189. The means of subsistence and other kinds of women's peculiar property, will be described hereafter The same writer states how it is to be used

Katyayana on the use of the peculiar property of woman.

"The independence of women, who have received such gifts, is recognised in regard to that property, for it was received through the kindness of the donors The power of women over the gifts of their affectionate kindred is ever celebrated, both in respect of donation and sale at their pleasure, even in the case of immovables."

Women can dispose of the immovables given by their husbands' kindred.

190. Women are competent to make gifts, and so forth, of the immovables given by their husbands' kindred.

Apastamba on the gifts of affectionate kindred.

191. Apastamba thus speaks of the gifts of affectionate kindred :—"Ornaments are the exclusive property of a wife, and so is wealth given to her by kinsmen or friends, according to some *legislators*

Explanation

Wealth given by kinsmen means that which is given at the time of marriage, and so forth, by kinsmen and the kinsmen of her presents or those of her husband

Ornamental apparel worn by women during the lives of their husbands cannot be taken by the heirs of the latter.

192. Manu and Vishnu speak on the subject of ornaments "Such ornamental apparel as women wear during the lives of their husbands, the heirs of those husbands shall not divide among themselves, they who divide it among themselves fall deep *into sin*."*

Any ornament worn by a woman with the consent of her husband shall be her property

Any ornament which a woman wears with the consent of her husband shall be her peculiar property, even if it have been not given to her: *so says* Medhatithi.† According to the foregoing text of Katyayana, a woman is competent to give away or sell any immovable or movable property which she has received from her husband's kindred.

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* *Ornamental apparel* should be *ornaments*, *Fall into deep sin* should be *become outcaste.*

† I have here corrected the original translation.

What property may be enjoyed by a woman at pleasure after her husband's death.

193 Narada says:—"Property given to her by her husband through pure affection she may enjoy at her pleasure after his death, or give away, with the exception of lands or houses."

Explanation. Woman can alienate movable but not immovable property given by husband.

194. Consequently a woman can dispose of movable property which has been given her by her husband, but she can never dispose of immovable property The same rule holds good in the case of *saudayika*, or the gifts of affectionate kindred.

How a woman on the death of her husband may enjoy his estate and where she is to live.

195. Katyayana says, that "a woman, on the death of her husband, may enjoy his estate according to her pleasure; but in his lifetime she should carefully preserve it If he leave no estate, let her remain with his family"

A childless chaste widow shall, during her lifetime, enjoy her husband's property.

196. "A childless* widow, preserving her chastity, shall enjoy her husband's property with moderation, as long as she lives. After her death, the heirs shall take it."

On the death of the husband without other heirs, his property devolves on his wife.

197 This admits of two meanings The one is that, on the death of the husband, his property devolves on his wife, and becomes her own in default of other heirs

Property enjoyed by her with the consent of her husband is her peculiar property.

The other is that the property, which she enjoys with the consent of her husband in his lifetime, is to be regarded as her peculiar property Katyayana says as to the first of these:—"Let a woman on the death of her husband enjoy her husband's property at her discretion"

This applies to movables.

This refers to property other than immovable.

How a woman shall enjoy immovable property.

The following provision is made for immovable property: "Let a woman enjoy it with moderation as long as she lives. After her death, let the heirs take it."

Explanation.

Moderation means without much expenditure. *Childless widow* means one who has no heir of her own,

The property protected in the lifetime of her husband.

198. On the second, it is said that "while he lives she should carefully preserve it," or, in other words, the property shall be protected in the lifetime of the husband. If her husband have left no wealth, the widow should live with his family.

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* Childless should be sonless.

Immovable property cannot be disposed of by the widow at her pleasure.

199. Hence the immovable property, which a woman gets after the death of her husband, cannot be disposed of at her pleasure.

Explanation

The meaning of this is consonant with that of the husband's donation (which can only be enjoyed but not spent.)

The texts of Katyayana do not refer to the peculiar property of woman The inconsistency owing to this is removed by the similarity of meaning

A woman cannot dispose of immovable property inherited on the death of her husband

200. As a woman cannot make a present of, or at pleasure dispose of immovable property, given to her by her husband in his lifetime, so she cannot dispose of any immovable property which she inherits on his death.

So the Ratnakara and Prakasakara.

The same opinion is maintained in the *Ratnakara* and the *Prakasakara*.

Nor the immovable property inherited from her son.

201. If the mother, on the death of her son, get his immovable property, she cannot make a gift of it, or dispose of it at her pleasure.*

Devala on the above

202. Devala says, as to the property in question :

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* The correct translation of sections 197—201 is as follows: Husband's Daya means husband's wealth which the wife obtains. That may happen under two circumstances The first of them is when on the death of the husband on failure of other (preferential) takers, it becomes the subject of the widow's proprietory right, and the second circumstance is when such wealth becomes the subject of the wife's proprietory right during the lifetime of the husband with his permission With reference to the first Katyayana says "A woman on the death of her husband may enjoy his estate according to her pleasure" This refers to property other than immovable As regards immovable property however he says "Let a woman enjoy it being moderate as long as she lives. After her death the heirs take it" *Moderate* means without being extravagant in expenditure. The adjective *sonless* (in the text cited before) indicates the circumstance under which her right accrues With reference to the second circumstance, he says : "In his lifetime she should carefully preserve it" *Anyatha* i e., if he leave no property the widow should remain with her husband's family. Thus in respect of immovable property of the deceased husband, right to which accrues to the widow, she has no independent power of alienation by gift and the like by analogy to the case of gift by the husband, which gives rise to the question by expectancy, as otherwise the expectancy to know what would be the rule in such a case would remain unfulfilled. Thus also the irrelevancy of this text about inherited property appearing in the chapter on Saudayika Stridhana is also avoided, because expectancy is stronger than relevancy of the subject Thus as by express texts a woman has no right of alienation by gift and the like to immovable property given to her by the husband, so by analogy she has no such right in husband's immovable property inherited by her. Thus say the Prakasha and the Ratnakara. The same rule applies by analogy to immovable property inherited by a woman through her son, for in this case there is the expectancy to know but there is no direct text about it.

"*Britti*, ornaments, perquisites, and wealth received by a woman *from a kinsman*, are her own property; she may enjoy it herself, and her husband has no right to it, except in extreme distress."

Explanation.

203. *Britti* means "property appropriated to her support." *Abharana* means ornaments. *Perquisites* means "wealth given to a damsel on demanding her in marriage." *Wealth received* means "that which is received from kinsmen." These are the several kinds of the peculiar property of women.

The property of a woman not to be used but for the relief of a distressed son.

204. "If he (the husband) give it away on a false consideration, or consume it, he must make good the value to the woman, with interest; but he may use the property of his wife, to relieve a distressed son."

Explanation.

The property of a woman should not be improperly given away or consumed without her consent, but it may be used for the relief of a distressed son. It is declared by the same writer that the husband has power to use it with or without the consent of his wife.

When the husband shall pay the principal only.

205. If the husband, "having obtained her consent, use the property amicably, he shall be required to pay the principal when he becomes rich."

The husband to refund the value of his wife's property at his convenience.

206. If the wife give her peculiar property through affection, when her husband is ill, or in danger, or has been confined by a creditor, he may give her the value of it when he pleases.

Explanation.

The meaning of the above is that if the wife, observing her husband's illness or the like, give her wealth, it may be re-paid by him at his pleasure.

When a husband is not liable to make good the property taken from his wife.

207. Yajnyavalkya says that "a husband is not liable to make good the property of his wife, taken by him in a fa[illegible], or for the performance of a duty, or during illness, or while under restraint."

Explanation.

While under restraint signifies while he is so ill that he cannot work.

When money, taken from his wife is not to be repaid by a man. When it is to be.

208. Katyayana specially declares that money, taken by a man from his wife, for performing some imperative duty, when he has no means of doing so, shall not be repaid. But if the husband "have taken a second wife, and no longer give his first wife the honor due to her, the king shall compel him, by violence, to restore her property, though it was put amicably into his hands."

209. "If suitable food, apparel, and habitation, cease to be provided for a wife, she may by force take her own property, and a just allotment *for such a provision*; or she may, *if he die*, take it from his heir. **When a wife can forcibly take her own property, &c.**

210. "This is a law of Likhita, but after receiving *her own property and just allotment*, she must reside with the family of her husband; yet, if afflicted by disease, and in danger of her life, she may go to her *own* kindred." **The wife after regaining her rights, must reside with the family of her husband.** **When she may go to her own kindred.**

211. "But a wife who does malicious acts injurious to her husband, who has no sense of shame, who destroys his effects, or who takes delight in being faithless to his bed, is held unworthy of the property before described **A bad wife is unworthy of peculiar property.**

212. "What has been promised to a woman by her husband, as her exclusive property, must be given by his sons as a debt of his, provided she remain with the family of her husband. It is not to be given, if she live with the family of her father." **Any thing promised to a woman by her husband as her exclusive property, must be given by his sons as a debt of his.**

213. *The honor due to her.* This means that, if the husband do not visit her after the time of her menses and do not provide her with food and raiment, the wife has the right to demand her peculiar property from her husband, though it might have been given to him at the time of his sickness or under similar circumstances. **What is meant by "the honor due to her."**

214 *After receiving*, &c Even if she receive her own property and allotments, she must reside with the family of her husband and not go to the family of her father. *Who does malicious acts injurious*, &c. This shows that the kindred should demand the peculiar property from such a woman. *What has been promised to a woman by her husband.* This passage does not require any explanation. **Explanation.**

SUCCESSION TO A WOMAN'S SEPARATE PROPERTY.

215. Manu says on this subject :—"On the death of the mother, let all the uterine brothers and the uterine sisters divide the maternal estate, &c., in equal shares. It is fit that even to the daughters of those daughters something should be given, from the estate of their maternal grandmother, on the ground of natural affection. **How the mother's property is to be divided.**

Explanation.

216. *Uterine* signifies the offspring of the same father and mother. *Sisters*: only the unmarried ones are to be equal sharers.

Vrihaspati's authority on the point.

217. Vrihaspati confirms this, by declaring that "a woman's property goes to her children, and the daughter is a sharer with them, provided she be unaffianced; but, if she be married, she shall not receive the maternal wealth. Something should be given her that her feelings may not be wounded." *To her children* means to her sons

Explanation.

218. *Sharer with them*, that is, an equal partaker, because no distinction is made. *If she be married* signifies if *provided* with a husband. *Something*, that is, in proportion to the estate.

Who receive a woman's separate property.

219. Gautama says that a woman's separate property goes to her daughters unmarried and unprovided for.

Explanation.

220. *Unprovided* indicates misfortune, such as the want of son, husband, or wealth.* This opinion is held in the *Ratnakara* and by some writers.

The daughter shall receive a share from the maternal estate.

221. Even if the daughter as above described be destitute of a son, she shall receive a share from the maternal estate like the sons.

The unmarried daughter inherits the property given to the mother on her marriage.

222. Manu says:—"Property given to the mother on her marriage *(yautaka)* is the portion of her unmarried daughter."

Yautaka.

223. *Yautaka* means property received at the time of marriage from parents, and the like

Nuptial gifts.

224. Vasishtha says, "let the females share the nuptial gifts *(parinayya)* of their mother." "A nuptial gift *(parinayya)* means furniture, such as a mirror, combs, and so forth."

Who receive the residue of the mother's property after the payment of the debts.

225. Yajnyavalkya says, "the daughters share the residue of their mother's property, after payment of her debts, and so forth, and their issue succeed in their default."

The daughters shall divide their mother's effects, &c.

226. "Let the daughters divide their mother's effects, remaining over and above the debts; on failure of such, the

* The correct translation is unprovided means childless having a poor husband and also widowed.

(male) issue, that is, the sons, (in other words) their brothers, and their (daughters') sons shall inherit according to Manu.*

227. The foregoing rule refers to the property received by the woman, at the time of her marriage in the form denominated Brahma, and her (nuptial gifts, *i. e.*) furniture, combs, and so forth.† Where the rule is applicable.

228 Katyayana says :—" But on failure of daughters the inheritance belongs to the son. That which has been given to her by her kindred goes on failure of kindred to her husband." Who succeed on failure of daughters.

229. "Married sisters shall share with kinsmen This law concerning the separate property of a woman is ordained in the case of partition." Married sisters shall share with kinsmen.

230. *On failure of daughters*, and so forth: The meaning of this is that the mother's estate, which consists in her furniture, nuptial gifts, as well as the gifts of parents, goes to her son, provided there be no daughters. Explanation.

The property, except the abovementioned articles, goes to the son and daughter both after the death of the owner. This has been ordained before.

231. *Given to her by her kindred*: What is given by any one except the father, goes to both the brother and sister but the latter, if unmarried, becomes an equal sharer. The sisters, if married, shall receive something from the estate. This is the signification of the text regarding married sisters. Married sisters shall receive something from the estate.

232. *On failure of kindred*, that is, in default of daughter's son and the like,‡ the woman's property devolves on her husband. Explanation.

233. Manu says :—" It is admitted that the property of a woman married according to (any of) the ceremonies called *Brahma*, *Daiva*, *Arsha*, *Gandharba* and *Prajapatya*, shall go to her husband, if she die without issue. But her wealth, given to her on her marriage in the form called *Asura* or either of the other two (*Rakshasa* and *Paisacha*) is ordained, on her death without issue, to become the property of her mother and father. " The property of a woman married according to certain ceremonies shall go to her husband, on failure of issue. When her property goes to her parents.

234. *Without issue*, that is, without children. Explanation.

* The correct translation is: The daughters take the mother's property which remains after payment of her debts. In their default *i. e.*, on failure of daughters; their issue means the daughter's son and the daughter's daughter, according to the text of Manu.

† The correct translation is: This refers to furniture and the like property of the mother received at marriages in the approved forms of marriage beginning with the Brahma.

‡ In default of the daughters, son and the like, would be more correct.

Who, according to Gautama, shall get the sister's fee.

235. Gautama says, "the sister's fee belongs to the uterine brothers; after them it goes to the mother, and then to the father. Some say that it goes to him before her."

Where this text applies.

236. This text alludes to property received at the time of marriage (in the forms) called *Asura* and the other two.

Who shall take the wealth of a deceased damsel.

237. Baudhayana says, "the wealth of a deceased damsel, let the uterine brothers themselves take; on failure of them, it shall belong to the mother, or, if she be dead, to the father."

ON THE DISTRIBUTION OF EFFECTS CONCEALED.

How effects secreted by one parcener from the others, and discovered after partition, are to be disposed of.

238. On this subject Yajnyavalkya says, "when effects secreted by one parcener from the others are discovered after partition, the co-heirs shall again distribute those effects in equal shares: this is a settled law."

A coparcener who conceals effects held in coparcenary cannot be charged with theft.

239. Partition being suggested as a matter of course, it is intimated by the enunciation of this text that the crime of theft is not committed by concealing effects held in co-parcenary This is the opinion of Halayudha.

Law of Bhrigu regarding effects, a part of which, being secreted is subsequently discovered.

240. Katyayana says, "if the parceners have secreted part of the effects from each other, or if any mistake have been made in the partition, on a subsequent discovery, there must be an equal division *(or re-distribution)* of what is restored: this is a law of Bhrigu. Nor let a co-heir be obliged to make good what he had expended *before partition for the necessary support of his family.*"

Explanation.

Equal division means that the division should be precisely similar. *What he had expended*, &c., signifies the concealed effects common to all. Therefore, the meaning is that what has been consumed by a co-heir, he shall *not be required to make good.*

A co-heir shall not be required to make good what has been consumed by him.

DISTRIBUTION AMONG BROTHERS UNEQUAL IN CLASS.

What the sons of wives of different classes shall take.

Manu says, "let the son of the Brahmani take four parts, the son of the *Kshatriya* three, the son of the *Vaishya* two parts, and the son of the *Sudra* a single part, if he be virtuous."

The division according to the Mahabharata.

241. It is said that in the *Mahabharata* that the son of the *Kshatriya* wife shall receive four such parts of his father's estate, and he shall also take whatever implements of war belong to his father, but the son of the *Vaisya* wife shall have three shares, and the son of the *Sudra* one share.

The estate of the *Vaisya* should be divided into five parts, four of which his son by a wife of his own class shall receive, and the remaining one shall be received by his son by a *Sudra* wife. How the estate of the Vaisya is to be divided.

242 This rule applies where the Brahmin had married four, the *Kshatriya* three and the *Vaisya* two wives from different classes. But if this be not the case, the separate share of a son of the wife different in class, should not be made from the said ten, eight, and five divisions. Where this rule applies.

243. *Implement of war* means horses, weapons, &c. Explanation.

244. Vishnu declares, "but if a Brahmin leave three sons and none by a *Sudra* wife, they shall divide the estate into nine parts." The estate of a Brahmin to be divided into nine parts.

245. The rule is also obtained in the case of a *Kshatriya*. Where this rule is applicable.

246. Vrihaspati says: "land received as reward for sacred literature must never be given to the son of the *Kshatriya* or other wife of inferior class · even if his father gave it to him, the son of the Brahmana wife may nevertheless resume it after his father's death." The son of the Brahmin wife shall receive land received as reward for sacred literature

247. Vriddha Manu says · "sons of the Brahmani wife shall take the land which descends as a holy heritage, but all the sons by women of the twice-born classes shall succeed to the house and field successively inherited from ancestors." Vriddha Manu on the point.

248. *Descends as a holy heritage* means, what is received for performing a sacrifice or imparting lessons in literature, or what is given as a reward. *Twice-born* signifies the sons of the three classes other than the *Sudra*. Explanation.

249. Sankha and Likhita say:—"A son by *Sudra* woman does not succeed to the paternal estate; whatever his father gave him, that alone shall be his share; but let the father also give him a bull and a cow, some black iron, and any black grain excepting linseed." The share of the son by a Sudra woman.

250. Manu says:—"But whether the Brahmin have sons or have no sons *by wives of the first three classes*, no more than a tenth part must be given to the son by a *Sudra* wife." According to Manu, a tenth only is to be given to the son by a Sudra wife.

251. "The son of a Brahmin, a *Kshatriya*, or a *Vaisya*, by a woman of the servile class, shall inherit no part of the estate *unless he be virtuous, nor jointly with other sons unless his mother was lawfully married*: whatever his father may give him, let that be his own." When a son of one of the twice-born classes by a Sudra wife, shall inherit.

Explanation.

252. *Have sons* means have issue by the wives of the first three classes. *Have no son* signifies have issue of such kind.

A son by a Sudra wife, though he be virtuous, shall receive a tenth only of the paternal estate

253. *Shall inherit no part of the estate*, that is, even if the father be favourable to his son by a *Sudra* wife, he shall have no power to give him greater than the said tenth part. This is the opinion expressed in the *Kalpataru*. But a different opinion is held in the *Parijata*. A son by a married *Sudra* wife, though he be virtuous, shall receive the tenth part only of the paternal estate

How the estate of a man who leaves no legitimate offspring shall be disposed of.

254. Vrihaspati says, that "a virtuous and obedient son, born of a *Sudra* woman unto a man who leaves no legitimate offspring, shall take a *provision for his maintenance*, and the kinsmen shall inherit the remainder of the estate"

Explanation.

255. *Who leaves no legitimate offspring*, that is, who has no son by the wives of the first three classes.

Where this rule is applicable.

256. *Kinsmen*, first the nearest, and in default of them the remotest kindred. This rule relates to the child of an unmarried *Sudra*, for the text is laid down in the section treating of an unmarried woman.

When a son begotten by a Sudra on a female slave, may take a share of the heritage

257. Manu says:—" But a son, begotten by a man of the servile class on his female slave, or on the female slave of his slave, may take a share of the heritage *if permitted by the other sons* this is the law established."

Yajnyavalkya on the point.

258. Yajnyavalkya says:—"A son, begotten by a man of the servile class on his female slave, may receive a share by his father's choice, or, after the death of the father, the brothers shall allot him half a share."

A son of a Sudra by an unmarried woman may receive a share by the permission of his father, &c.

259. A son of a *Sudra* by an unmarried woman* may receive a share by the permission of his father; but, if the father be dead, he shall receive half of the share of his brothers who are borne by married wives.

When he shall take the whole.

260. " Should he have no brother, he shall take the whole, unless there be a daughter's son,"

Explanation.

261. The meaning of the above is that the son of a *Sudra* by an unmarried† woman receives the whole heritage, provided there be no son of married wives and daughters' sons.

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* By a woman not married by him would be more correct.

† Woman not married by him would be more correct.

262. Gautama says :—" Sons, borne by women in the inverse order of the classes, shall have a similar allotment to that of the son produced by a woman of the servile class." **The share to be received by sons, borne by woman in the inverse order of the classes.**

263. A son begotten by a *Sudra* or other man of an inferior class on a *Vaisya*, or other woman of a superior class shall receive the means of livelihood, that is, stock for agriculture and the like, such as a plough, a ploughshare, and so forth. This is the meaning. **A Sudra's son begotten on a woman of a superior class shall receive the means of livelihood.**

ON THE PARTICIPATION OF SONS BORN AFTER A PARTITION.

264. Sons born after a partition are of two kinds, namely, the one is *the son who* at the time of partition is *in the womb*, and the other, the son *conceived* and born after the partition **Two kinds of sons born after partition**

265. Yajnyavalkya speaks of the first :—" After a division, a son born of a woman equal in class claims patition *of the original estate* ; or a distribution shall be made of the present wealth, exclusive of *subsequent* income and *past* expenses." **A son born of a woman equal in class claims participation of the original estate, &c.**

266. *Claims partition*, that is, is competent to receive a share. *Of the present wealth* means out of the present wealth visible, or both visible and invisible. *Exclusive of subsequent income*, &c., that is, excluding the subsequent increase and what has been consumed by the brothers. **Explanation.**

Halayudha is of opinion that " a son born after partition, being virtuous, shall receive his share of the whole estate ; that is, of both sorts of property, forthcoming and not forthcoming ; but one deficient in good qualities shall only receive a share of the present wealth." **A son born after partition, being virtuous shall receive his share of the whole estate, &c.**

267. Vishnu says :—" Sons, with whom the father has made a partition, should give a share to the son born after the distribution." **Who shall give a share to the sons born after partition**

This text has like the preceding two significations. **This text is differently explained.**

268. Of the second, that is, the son born after the partition, Manu says :—" A son, born after a division, shall alone take the paternal wealth, or he shall participate with such *of the brothers* as are re-united with the *father*." **What share shall be received by a son, born after a division**

Explanation.

269. As the son, who is in the womb at the time of partition, receives his share from the brothers, so the son born after partition does not receive it from them, but shall have only the share of his father. This meaning is derived from the word *alone*.

When the father's share shall be delivered to the son born after partition.

270 Here is to be understood that if, in the life-time of the father, the sons desire to have their share and the father be also anxious to reserve his share, the father's share should, after his death, be delivered to the son born after partition. But if the father, after division, being re-united with his own brother, or sons, die, the son born after partition shall receive his father's share from the re-united persons or co-heirs.

The younger brothers of those who have made partition with their father shall take the latters' share

271. Vrihaspati says:—"The younger brothers of those, who have made a partition with their father, whether children of the same mother or of other wives, shall take the father's share.

A son begotten after partition cannot claim the wealth of his brothers.

272 "A son, born before partition has no claim on the paternal wealth, nor one, begotten after it, on that o his brothers."

Explanation.

273. *Younger brothers* means that if, after the partitior many sons be born, they shall still have the share of thei father. *A son born before partition*, that is, he who i separated from his father

All the wealth acquired by the father after partition goes to the son thereafter begotten by him.

The reciprocal claims of sons born before and after partition.

274. "All the wealth which is acquired by the father himself, who has made a partition with his sons, goes to the son begotten by him after the partition. Those born before it, are declared to have no right; as in the wealth, so in the debts likewise, and in gifts, pledges, and purchases. They have no claims on each other, except for acts of mourning and libations of water"

Summary.

275. The summary of the above is this, that a son who is in the womb at the time of partition, and is born after it, shall receive his equal share from the separated coheirs out of their estate. But he, who is *begotten* and born after partition, shall only get the share of his father. This is the opinion of Manu and other legislators.

OF SONS.

This section begins with the texts of Yama Narada, Manu, Baudhayana, Devala, Vishnu and Yajnavalkya, about different kinds of sons which are to be found at p. 639-649 of Vol I and are here omitted as unimportant.

Vrihaspati on the son entitled to the wealth of the father.

276. Vrihaspati says: "One alone, namely, the son of the body, is declared to be owner of the wealth *left by his father;* an appointed daughter is equal to him; but the other sons shall only be maintained.'

Manu on the point.

277. Manu says, "The legitimate son is the sole heir of his father's estate; but for the sake of innocence, he should give a maintenance to the rest."

Explanation,

278. *For the sake of innocence*, means for the sake of kindness *Maintenance* means livelihood.

When the legitimate son and the son of an appointed daughter, inherit equally.

279 If the son of an appointed daughter be first born and the true legitimate son be born subsequent to him, an equal partition should be made between them

Manu on the point.

280. Manu ordains on this, "A daughter having been appointed, if a son be afterwards born, the division of the heritage must in that case be equal, since there is no right of primogeniture for the woman.

Katyayana on the shares of the legitimate son, and of other sons.

281 Katyayana says, "If a legitimate son be born, the rest are pronounced sharers of a third part, provided they belong to the same tribe, but if they be of a different class, they are entitled to food and raiment only."

A legitimate son, though last born, inherits the whole estate *minus* the shares of other sons.

282. This share of a third part is for the *Kshetraja*, or the son of a wife, according to the text of the *Brahma Purana* :—"The son begotten by a man himself *in lawful wedlock*, even though last born, shall enjoy the whole of the estate; let the son of a wife begotten *by a kinsman* obtain a third part as his share, and the son of an appointed daughter a fourth."

Where the text is applicable.

283. Some legislators are of opinion that the preceding text relates to the given son who possesses virtuous qualities.

When the adopted son shares a fourth part.

284. Premising 'son,' Vasista says "if after he has been adopted a legitimate son be born, he (the adopted son) shall receive a fourth part, if in Abhyadiyaka rites is not spent." The meaning is that if after adoption, a son is born to the adopter. The words 'much wealth' are understood after the words 'is spent.' (The meaning of the latter

part of the text is) if in sacrifices much wealth is not spent by the legitimate son *

Inconsistencies reconciled A virtuous legitimate son receives the whole estate of his father; in any other case, the other sons divide it with him

285. Manu and other legislators have said that, notwithstanding other kinds of sons, the legitimate son alone receives the whole estate of his father, but they have also declared that the other sons are sharers of the estate. To remove this contradiction it must be understood that, if the legitimate son be very virtuous, he shall receive the whole estate without giving a share to the others, but if he be void of good qualities, and others possess them they are entitled to have their respective shares, as has been stated above.

286. The inconsistency in the rule that the son of the wife and the son given shall receive more or less from the estate, may be removed by *observing* the distinction of good and bad qualities.

The inconsistency in the texts of Vishnu and Yajnyavalkya, regarding the performance of *Sraddha in order*† will be removed by *observing* the distinction of good qualities or vices, or recognising their rights alternatively

Sons born of the same mother by different fathers receive the estates of their fathers.

287 Vishnu says, on partition between two sons born of the same mother, by different fathers: "Sons born of the same mother by different fathers shall receive the estates of their respective fathers."

Childless persons alluded to elsewhere.

288 The description of childless persons has been given in the *Shradh Chintamani*, and it is therefore not necessary to dwell any more upon the subject.

A son informally adopted does not inherit.

289 The son who is adopted without observing the rules ordained is not competent to have a share, because he is not to be considered as a real son.

ON THE SUCCESSION TO THE ESTATE OF ONE WHO LEAVES NO SON.

Order of succession to the wealth of a person who leaves no son.

290 Vishnu says:—"The wealth of him who leaves no son goes to his wife; on failure of her, to his daughter; if there be none, to the mother; if she be dead, to the father, on failure of him, to the brothers; after them it descends to the brothers' sons; if none exist, it passes to the kinsmen *(bandhu)*; in their default to relatives, *(sakulya)*, on failure of these to the fellow-student;

* The following is the translation that appears in the original book; it is incorrect and I have therefore wholly replaced it Premising the adopted son, Vrihaspati says "If a legitimate son be born subsequent to the adoption of one, the latter shares a fourth part, provided the estate have not been expended in pious acts." *Pious acts* means sacrifices and so forth.

† In the original the words religious ceremonies appear for the words in Italics substituted by me for them, to make the translation correct.

for want of these heirs the property escheats to the king, excepting the wealth of a Brahmin." Bandhu means Sapinda; Sakulya means of the same Gotra.* **Explanation**

291. *Vrihat* Manu says, "The relation of the *sapindas*, or kindred connected by the funeral oblation, ceases with the seventh person; and that of *samanodakas*, or those connected by a common libation of water, extends to the fourteenth degree, or, as some affirm, it reaches as far as the memory of birth and name extends. After the fourteenth degree descendants are said to be of the same *gotra*, or the relation of family name." **Who are sapindas and who samanodakas.** **Who are descendants of the same gotra.**

292. *Who leaves no son* (in the above text of Vishnu) means who has no son, grandson or greatgrandson. **Explanation.**

The right of performing funeral obsequies is settled according to the following authority: "The son, the son of a son, and the son of a grandson," hence their right of inheritance, which is similar to the right of performing funeral obsequies, is likewise established.

293. Therefore, in default of a greatgrandson, the estate devolves on the widow. **The widow's right to inherit.**

294. *Vrihat* Manu says:—"A widow, who has no male issue, who keeps the bed of her lord inviolate, and who strictly performs the duties of widowhood, shall alone offer the cake at his obsequies, and succeed to his whole estate." **Description of widow entitled to succeed**

295. Vrihaspati declares:—"Although distant kinsmen, although his father and mother, although uterine brothers be living, the wife of him who dies leaving no male issue shall succeed to his share. If the wife die before her husband, she shall receive his consecrated fire. If not, the widow faithful to her lord, shall take his wealth; this is a primeval law. Taking his effects, movable and immovable, the precious and base metals, the grains, liquids, and clothes, let her cause several *Shraddhas* to be offered in each month, in the sixth month, and at the close of the year. With food and other things consecrated to the gods and the manes, let her honor paternal uncles, spiritual parents, daughters' sons, the offspring of her husband's sisters, and his maternal uncles, old men, helpless persons, guests and females of the family. Those near or distant kinsmen who become her adversaries or who injure the woman's property, let the king chastise by inflicting on them the publishment of robbery." **Vrihaspati on the point.** **Religious duties of the widow who inherits the estate of her husband.** **Her duties towards her husband's kindred.** **Kinsmen who become her adversaries, shall be punished.**

296. Here by the mention of the *Shraddhas* that a wife **Explanation.**

* In the original the following words appear which I have wholly changed as incorrect: Kinsmen signifies distant kindred. Relative means those who are descendee from the original stock.

must perform, it is meant that she shall also perform the ten *Shraddhas* of her husband recently deceased, and also celebrate the obsequies annually, and take the whole estate of her lord.

The rules apply where the husband lived separate.

297. What has been said above is applicable in the case of a husband who has separated from his co-heirs

298. *Faithful to her lord* means chaste. Faithful wife does not here signify one who burns herself on the funeral pile of her husband, for she cannot then inherit her husband's estate. Therefore the conclusion is that, in the absence of a great grandson of her husband, the chaste wife is entitled to receive his estate.

Rule where the husband was unseparated.

299. Sankha speaks of cases where the husband lived with his co-heirs .—"To the childless wives of brothers and of sons, strictly observing the conduct prescribed, the proprietor of the estate must allot mere food and old garments which are not tattered "

Harita on the right of widow.

Harita says : "A woman widowed and young is untractable ; but separate property must always be given to women that they may pass their destined life."

Argument on the application of the text.

Balarupa is of opinion that this text alludes only to a woman whose husband was re-united with his co-heirs.

300. When the husband dies without partition with his co-heirs, he has no share at all . what then could his wife receive ? It cannot be argued that she is entitled to a share like her husband, because there is no authority for this ; nor should it be argued that the preceding texts are authority for her receiving a share, because they merely allude to the separate property of a husband.

Right of posthumous sons of brothers separated.

301 Therefore Vasishtha directs that "partition of heritage *takes place* among brothers, *having waited* until the delivery of such of the women as are childless *but pregnant*."

Explanation.

At the time of partition a share must be reserved for the sons of widowed wives of the brothers, who are pregnant by their husbands, until the delivery of children ; and if no male issue be produced, the abovementioned shares should be taken by them, that is, by living brothers ; and it has been distinctly explained in the *Ratnakara* and other works.

The widow has but a life interest in her husband's estate.

302. Thus it is said in the *Mahabharata* · "For women the heritage of their husbands is pronounced applicable to use. Let not women on any account make waste of their husbands' wealth." Here *waste* means sale and gift at their own choice.

Explanation.

303. On failure of wives, the heritage devolves on the daughters, according to the preceding text of Vishnu.

Daughters inherit on failure of widows.

304. Narada also says :—"On failure of male issue, the daughter inherits, for she is equally a cause of perpetuating the race ; since both the son and daughter are the means of prolonging the father's line."

Narada on the ground of the daughter's right.

305. Manu says :—"The son of a man is even as himself, and the daughter is equal to the son , how then can any other inherit his property, notwithstanding the survival of her who is as it were himself?"

Manu on the point.

306. Vrihaspati says :—"As a son, so does the daughter of a man proceed from his several limbs ; how then should any other person take her father's wealth ?"

Vrihaspati on the point.

307. But what kind of daughter is competent to receive her father's heritage, is declared by the same author :

Description of daughter competent to inherit.

"Being of equal class and married to a man of like tribe, and being virtuous and devoted to obedience, she (namely, the daughter,) whether appointed or not appointed to continue the male line, shall take the property of her father who leaves no son."

308. Balarupa is of opinion that the maiden and married daughters take the heritage successively *because*, Parasara says :—"Let a maiden daughter take the heritage of one who dies leaving no male issue ; if there be no such daughter, a married one shall inherit"

The respective right to the maiden and the married daughter

309. Here it should not be argued that the aforesaid authorities are only intended for the right of the *appointed* daughter ; for, in the preceding text of Manu, from the term *unappointed* it is to be understood that the daughter was neither appointed nor intended for appointment. Yet *appointed* should not be here spoken of, because Manu has declared that "such a daughter receives an equal share with the son."

Explanation.

310. In default of the daughter, the mother succeeds to the estate ; according to the authority of Vishnu, and Vrihaspati also has declared thus :—"On the decease of a son, who leaves neither wife nor male issue, the mother must be considered as heiress, or, by her consent, the brother may inherit."

In default of the daughter, the mother succeeds to the estate.

311. *Her consent*, that is, the mother's consent. By the term *mother*, the father is also meant. Hence, according to the *Parijata*, her *consent* means the consent of the mother and the father.

Explanation.

The daughter's son is the next heir

312. Vrihaspati says: "as the ownership of the father's wealth devolves on her, although kindred exist, so her son likewise is acknowledged to be heir to *mother's* and his maternal grandfather's estate."

Manu's authority.

313. Manu says:—"Let the daughter's son take the whole estate of his own father, who leaves no *other* son, and let him offer two funeral oblations, the one to his own father, the other to his maternal grandfather."

Where these two texts apply.

314. These two texts obtain in default of mother and father. For the right of succession of wife, daughter, and others, has been stated successively

The paternal grandmother succeeds in default of the mother.

315. Manu says:—"Of a son, dying childless *mother* shall take the estate, and the mother also being dead, the paternal grandmother shall take the heritage"

Explanation.

316. The meaning is that as, on failure of daughter and others who succeed before her, the mother is the successor, so the paternal grandmother inherits in default of kinsmen.* It is stated on authority that, on the failure of the mother, the property devolves on the father and other kinsmen nearest in degree.

The father's right to succeed.

317. In default of the mother, the property goes to the father, according to the authority of Vishnu.

318. Manu ordains:—"Of him who leaves no son, the father shall take the inheritance or the brothers."

The brother's right to succeed.

319. The right of succession of the brother has been settled by the authority of Vishnu.

320. Gautama says, "The wealth of deceased brothers goes to the eldest."

The right of the sapinda.

321 Manu says, "To the nearest *Sapinda* the inheritance *next* belongs"

The right of the spiritual preceptor and pupil.

322. Apastamba says: "The effects of him, who leaves no male issue, are received by his nearest kinsman; on failure of him by the remote one; in default of him by the spiritual preceptor; after him by the pupil."

Yajnyavalkya on the order of succession

323 Yajnyavalkya says: "A wife, daughters, both parents, brothers, their sons, kinsmen sprung from the same original stock, distant kindred, a pupil, and a fellow student in theology; on failure of the first of these, the next in order shares the estate of him who has gone to heaven leaving no male issue. This law extends to all classes."

Explanation.

324. *Both parents.* Here a doubt may arise as to the order of succession. To remove this, the following

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* Kinsmen is wrong. It should be Sakulyas.

explanation will suffice: the mother, and, on failure of her, the father, because this text has the same origin with that of Vishnu.*

325. *Their sons* means brothers' sons.

326. *Leaving no male issue* means having no son, nor son's son, nor grandson's son.

327. Katyayana says:—"If a man die separate from his co-heirs, let his father take the property on failure of male issue; or successively the brother, or the mother, or the father's mother"

Who shall take the property of a man dying separate from his co-heirs on failure of male issue.

Explanation.

328. Here the altercation is decided in this manner: the property acquired by the father devolves on him, and that which is acquired by brothers and others shall be shared by them.

Paithinasi on the point.

329. Paithinasi says —"The effects of him who leaves no male issue go to his brother; on failure of brothers, his father and mother shall take the heritage."

Devala on the point.

330. Devala says :—"Next, let brothers of the whole blood divide the heritage of him who leaves no male issue, or daughters equal (as appertaining to the same tribe); or let the father, if he survive, or *half* brothers belonging to the same tribe, or the mother, or the wife, inherit in their order. On failure of all these, the nearest of the kinsmen succeed."

Explanation.

331. *Equal (as appertaining to the same tribe)* refers to the brothers of the whole blood.

332. *Brother belonging to the same tribe*, signifies the sons of the stepmother.

333. To remove the inconsistency between the texts of Vishnu and Yajnyavalkya, Halayudha states that the phrase *in order*, in the text of Devala, applies to the order of succession as settled by Yajnyavalkya.

334. It appears also that the author of the *Kalpataru* is of the same opinion, because, citing the text of Devala, he quotes the texts of Vishnu and Yajnyavalkya. But it is not well settled, because Devala, leaving the order of succession declared by himself, explains it by taking the meaning of the order of succession mentioned by others.

* Vachaspati Misra's reading of the text of Vishnu is different from that of all the other commentators who place the father before the mother in the text But he is quite right when he says that the text of Yajnavalkya should be interpreted as identical with that of Vishnu. The father should therefore be placed before the mother, as in the Dayabhaga.

It is improper to depend upon what is in the possession of others by leaving that which is at our control. Even if this be done, contradiction in the passage of Paithinasi cannot be removed.

The order of succession of Yajnyavalkya and Vishnu refers to ancestral property and that of Paithinasi to other property.

335. Therefore, it is concluded in the *Ratnakara*, that the order of succession mentioned by Yajnyavalkya and Vishnu obtains in property acquired by forefathers, and in other property the order of Paithinasi and others obtains.

Baudhayana on the point

336. Baudhayana says "On failure of kinsmen connected by the funeral cake, kinsmen allied by family shall inherit, in default of them, the spiritual preceptor, the pupil, or the priest hired to perform sacrifices, shall take the inheritance, and lastly, on failure of them, the king."

When cognate kindered shall inherit

337. "In default of kinsmen allied by family," the *(Bandhu)* cognate kindred shall inherit, as stated by Yajnyavalkya

Three sorts of cognate kindred.

338. Cognate kindred are of three sorts, namely, a person's own, his father's, and his mother's, who are thus specified:

Who are a person's own cognate kindred.

339. "The sons of his own father's sister, the sons of his own mother's sister, and the sons of his own mother's brother, must be considered as his *own* cognate kindred."

His father's cognate kindred.

340. "The sons of his father's paternal aunt, the sons of his father's maternal aunt, and the sons of his father's maternal uncle, must be deemed his *father's* cognate kindred."

His mother's cognate kindred

341. "The sons of his mother's paternal aunt, the sons of his mother's maternal aunt, and the sons of his mother's maternal uncle, must be reckoned his *mother's* cognate kindred."

Explanation.

342. These should inherit according to their order.

The king is the ultimate heir of all but Brahmins.

343. Balarupa is of the same opinion. In default of the said heirs the wealth goes to the king, excepting, however, the property of a Brahmana

Manu on the point.

344. Manu speaks on this: "The wealth of a Brahmana shall never be taken as an *escheat* by the king: this is a fixed law; but the wealth of the other classes, on failure of all heirs, the king may take."

Devala on the point.

345. Devala says: "In every case the king may take the wealth of a subject dying without an heir, except the

estate of a priest; for the property of a Brahmana dying without an heir must be given to learned priests."

346. *Without an heir* means without one who is entitled to inheritance.

347. Vrihaspati says: "The king takes *as an escheat* the wealth of those *Kshatriyas*, *Vaisyas*, and *Sudras*, who leave no son, nor wife, nor brother, for he is lord of all."

Vrihaspati on the point.

348. Baudhayana says: "Poison destroys only him who takes it, but holy property kills a son and a son's son; the king shall not therefore take the property of a Brahman."

Why the king shall not take the property of a Brahmin.

349. Sankha and Likhita say, "The property of a learned priest descends to the Brahmanas, and not to the king"

Brahmins get the property of learned priests.

350. Therefore the summary of the abovementioned heirs is this, first, the son; on failure of him, the grandson; in his absence, the grandson's son; on failure of him, a chaste wife, in her default, the daughters; in their absence, the mother, in her default, the father; and in his default, the daughter's son; and in default of him, the brother; in his default, the brother's son; and on his death, the nearest kinsmen, in default of them, the remotest kindred according to their order: in default of all these, the nearest *sakulya*; on failure, of them, the remotest *sakulya**, in their absence, maternal uncles and others. But on failure of all these heirs the king inherits, except the property of a Brahmana, which goes to another Brahmana.

Summary.

351. Yajnyavalkya says: "The heirs of a hermit, an ascetic, and a professed student are, in their order, the preceptor, the virtuous pupil, and the spiritual brother and associate in holiness"

Who are the heirs of a hermit, an ascetic, and a professed student.

352. "Order," that is, the inverse order. Therefore, the preceptor takes the goods of the professed student, who passes away his life in the abode of his spiritual preceptor. The property of an ascetic is taken by his pupil. The property of a hermit is taken by one of his fellows.

Explanation.

353. There is no probability of ascetics and hermits getting the paternal wealth, according to the following text: "Persons who have left the household order are incapable to receive a share: a hermit is allowed to collect food for his support for a year; and an ascetic has his

Persons who have left the household order cannot inherit.

* The correct translations of the passage after the *brother's* son should be: in his default, the nearest Sapinda, in his default the remoter Sapindas in order; in their default, the nearest Sakulya; in his default, the more remote Sakulya.

property, such as a coupina, or piece of cloth worn over his privities, and the like."

Exceptions to the rules as to escheats.

354. Sankha says: "The inherited property of a woman must not be seized by the king, nor the *acquired* effects of an infant, nor the wealth of a woman received in the six modes of acquisition. nor the patrimony of an infant."

Explanation.

355. The six modes of acquisition have already been explained, that is, "what is given before the nuptial fire," and so forth

How long the king should keep the property of an infant.

356. Manu says, that the king should guard the property which descends to an infant by inheritance until he return from the house of his preceptor, or until he have passed his minority.

RE-UNION OF SEPARATED PARCENERS.

Re-union defined.

357. Vrihaspati says: "He is said to be re-united who, having made a partition, lives again, through affection, and so forth, with his father, his brother, or his paternal uncle.

Evidence of re-union.

358. "Our property shall be common to all" This kind of agreement is called re-union, and this is to be known by their jointly carring on any trade, because re-union depends upon the mutual use of the said property.

Explanation.

359. If one of the re-united persons have acquired, acquire, or shall acquire, any property, it shall be common to all the parceners. Therefore, after partition, the re-union of wealth with the father, brother, and paternal uncle, is called re-union. This is the opinion given in the *Prokasakara*. But this opinion, according to the author of the *Ratnakara* and others, is erroneous; because, from the import of the term "again," it is clear that, after partition, the mere making of the wealth of the parceners common to all is called re-union. Therefore re-union is possible with any of the co-heirs. But the terms *father*, *brother*, *uncle*, in the preceding text, are superfluous. Modern legislators are of opinion that mere mixture of wealth is called re-union. Therefore, the first principle of re-union is the common consent of both the parties; and it may either be with the co-heirs or with a stranger after the partition of wealth But it is not fixed that re-union should take place after partition.* If that were so re-union cannot

The first principle of re-union is the consent of the parties.

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* The preceding two sentences beginning with 'therefore' are incorrect. The correct translation is as follows· That is possible among those (co-heirs) that are separate in wealth on account of natural causes and also among those that are separate in wealth on account of partition.

take place with a brother born after partition. It may be said that re-union cannot take place with such a brother. This cannot be granted, because re-union with such brothers takes place

How re-union with minor co-heirs takes place.

360 If any of the co-heirs be a minor, and be separated by the consent of the mother, re-union may likewise take place with him by the consent of his mother.

SUCCESSION TO PROPERTY OF RE-UNITED PARCENERS.

No right of promogeniture at devision by re-united brothers.

361 Vrihaspati says :—"If brothers, who have made a partition, become through mutual affection reunited, and *again* make a division of their joint property, the first-born has no right to a larger portion

The disposal of share of a deceased brothers.

"Should any one of them die or any how seclude himself from the world, his share shall not be lost, but devolve on his uterine brothers

When his sister may take his share.

"But his sister is next entitled to take the share. This law concerns him who leaves no issue, nor wife, nor father, nor mother.

"That re-united parcener, who singly acquires wealth through learning, valour, and the like, shall take a double share, and the others each a share"

Explanation.

362 In a case of re-union, the eldest shall not get a larger share.

But some difference as to the wealth acquired through knowledge and so forth, is explained by the author himself

363 *Any one* if any of the re-united parceners cannot receive a share, through his death or secession from the household order, his share shall not be lost. Who then shall receive his share? In reply to this question the sage declares that it devolves on his uterine brothers, that is, those with whom he was re-united This text consequently coincides with that of Manu: "But his uterine brothers and sisters, and such brothers as were re-united after separation, shall assemble and divide his share equally."

Manu's authority.

Explanation.

364. The meaning is that a uterine brother, who is not re-united, shall not receive a share.

Another view of the case.

365. Some legislators explain the above in the following manner :—If, after the re-union of co-heirs, a portion of whose property was divided and the amount of each co-heir's share was only fixed, one of them die, leaving no son, wife, mother, or father, his *entire* share shall be taken by his uterine brothers who were united with him.

Explanation of the same.

By the division of a portion is to be understood that of the entire property, in the same manner as the

whole of the rice in a vessel at the time of cooking can be said to be boiled by seeing only a portion of it. The rule, that the uterine brothers shall receive the share of one who dies without leaving a son, wife, brother, or father, which has been mentioned above, is applicable in a case like this. This cannot be the case, for division cannot be said to take place when only the amount of shares is fixed. For that is known to the co-heirs even before partition. But actual division takes place when the co-heirs come to know the very things which each of them shall receive as his share. It cannot take place unless the articles that will fall to their share are precisely denoted, in the same way as cows are divided by taking hold of their horns. Therefore, on the death of the original owner, the right of co-heirs to the entire property becomes extinct, or is reduced, and causes the right of them to their respective shares. This is the essential feature of separation.

Application of the rule.

Wherein actual division consists.

Two sorts of partition.

366. Partition may be of two sorts, namely, the one in which the property remains entire, but the profit of it is divided among the co-heirs. By the other, the property is divided into as many shares as there are co-heirs.

A man shall, after re-union, give a share to a born uterine brother, and take that of one who is dead.

367. Yajnyavalkya says that a man shall, after re-union, give a share to a uterine brother who (jata) is born, and take that of one who is dead.

Explanations.

Halayudha says that born (jata) means living.

Others explain the abovementioned text in the following manner:—If, after the re-union of a father with his son, the former, having begotten another son, die, the first son shall give the share of the father to the last born son.

If one of two re-united brothers die, the surviving one shall receive the property of the other. But where there is re-union among step-brothers and, uterine brothers, the uterine shall receive each others' shares.

Hence, sons re-united with their father shall receive his share even if he have sons who are separate.

368. Consequently, sons who have re-united with their father shall receive the share of the latter, even if he have sons who live separated. For it is a general rule, that those who live together have a title to the share of such of them as die. Those who are re-united after partition and re united uterine brothers shall get each others' shares.

Re-union between father and son.

369. Re-union can also take place between father and son. It is also proper that the title of sons to the estate of their father should cease after the division of property, and should revive upon their re-union.

370. From the text of Vrihaspati, to the effect that re-united brothers receive each others' property, when they leave no son, and so forth, the decision that re-united sons only shall receive the property of the father cannot be correct. The foregoing doctrine controverted.

371. The foregoing argument is untenable; for the text of Vrihaspati is applicable where sons are born after re-union. Explanation.

372 The conclusion is, that sons born after partition shall receive the share of their father, who is re-united with his other sons. In default of sons born after partition, re-united sons or brothers or any such shall get it, and sons who live separated shall have no title to it Conclusion.

373. Manu says, that sons born after partition shall either get the share of their father, or share the property of those who live with him. Manu on the share of sons born after partition.

374 From the concluding portion of Manu's saying it is manifest, that sons born after partition get the entire property of their father, and that, in their default, it is received by those who were re-united with him Therefore the rule, that sons born before partition have no claim to paternal property, and that those born after it have an interest in it, is also reasonable. Explanation

375. It might be argued from the above that, if a man, who has made partition with his sons, re-unite with his brother and die without leaving any sons other than those who are separated, the re-united brother shall get his share, to which his sons have no claim. There can be no objection to this. Inference that a re-united brother shall get the property, and not sons who live separate.

376. Yajnyavalkya speaks of cases where the step-brothers are re-united and uterine brothers live separated: Re-united step-brothers, but not brothers who live separated, shall take each others' property A uterine brother, even when he is separated, shall have the property. But a separated step-brother cannot get it. Re-united step-brothers shall take each others' property. A uterine brother, even when separated, shall inherit, but not a separated step-brother.

377. It may be said that the re-union of step-brothers, and the birth of uterine brothers from the same womb, are the source of their right of inheritance. The reason of this rule.

378 The preceding text does not admit of the meaning that step-brothers shall not receive each others property, even when they are re-united, for then re-union becomes unnecessary. Explanation.

The re-united have a title to each others' shares.

379. Narada says: That those who are re-united have a title to each others' share In default of them, their sons obtain the share. In their default others *(other kinsmen)* who are re-united get it.

Explanation.

380 The meaning of the first half of the foregoing passage cannot be that every one must remember, at the time of re-distribution, what he had at the time of re-union. The entire property having become common by re-union, such an injunction would render the meaning of the text obscure

Disposal of the property of a re-united brother, who dies without leaving a son, or becomes an ascetic

381 Sankha says, if one of the re-united brothers die without leaving a son, or become an ascetic, the rest shall divide amongst themselves all his property, with the exception of what belongs to his wife These heirs shall have to support his wives for life, if they be chaste. If they prove unchaste, *even* their peculiar property shall be forcibly taken away.

An unchaste woman has no rights.

Explanation

382 If the deceased brother leave any unmarried daughter, she shall be supported, till her marriage, out of his wealth. Her husband shall afterwards support her. Therefore, the unchaste shall not only not be supported, but any property given her out of affection shall be forcibly taken away. The expenses of the support and marriage of the unmarried daughter shall be defrayed out of her father's estate.

The re-united are reciprocal heirs.

383. Katyayana say, those who are reunited get each other's property. This rule holds good with regard to those who lived separated. In default of sons, those who are re-united shall get each other's propery

Explanation.

384. The meaning of the latter part of the text is that, when a re-united man has no sons, his property shall then be taken by those who are re-united with him.

Summary.

385. The summary is, that if any one die after re-union, his property devolves on his living sons, grandsons, or great grandsons, born after partition In their default, the widow who observes all the sacred rules of widowhood, and gives up the eight kinds of sexual gratifications, shall get it: and the other widows who are chaste shall be supported but shall not get any share. The unmarried daughter of such proprietor shall be maintained out of his property till her marriage, the expenses of which shall also be defrayed out of it

The father of the deceased is also to be maintained.

386. If the proprietor leave a father, the latter shall be maintained out of his property, like his chaste wives.

387. In default of the aforesaid heirs, the entire property of the said proprietor shall devolve on those with whom he was re-united

In default of other heirs, the property devolves on re-united co-parceners.

388. If there be re-union between step-brothers and uterine brothers, the latter shall get each others' property.

On re-union between step-brothers and uterine brothers, the latter get each others' property.

389. If there be re-union among step-brothers only, and the uterine brothers remain separated, the step-brothers and the uterine brothers shall equally share the property of the deceased brothers

Surviving step-brothers and uterine brothers equally share the property of re-united step-brothers.

390. If only one survive, he shall get the whole

The survivor gets the whole.

391. If any one acquire property after re-union, by learning and so forth, and add it to the common stock, he will get two parts of it, and the others shall get only one part each.

Division of property, acquired after re-union by learning, and added to the common stock.

RIGHTS OF FATHER AND SON IN ANCESTRAL PROPERTY.

392. * It is declared in the work called *prakasa* that "immovable and biped property, even if it be self-acquired, cannot be sold or given away without the consent of the sons. They who are born, they who are yet in the womb, and *even* they who are not yet conceived, required paternal property for their maintenance. Therefore, it is improper to deprive them of it."

Immovable and bipted property, even if it be self-acquired, to be disposed of with consent of sons.

None to be deprived of paternal property.

393. As a special case, the proprietor can given away, sell, or mortgage the immovable property, in any crisis,

When the proprietor can dispose of immovable property.

* The correct translation of the text is · The above text is thus censured in another text "even a single individual may conclude a donation, mortgage or sale of property during a season of distress, for the sake of the family and especially for pious purposes." Even the divided immovable property can be given away or sold in case of common danger or when a daughter of the family is to be married or for like cause.

for the support of the family, and principally for religious acts. When any common danger happens, or when a daughter of the family is to be married, and the like, even the divided immovable property can be given or sold, by a person who has become separated.

Why one of the co-parceners cannot dispose of immovable property.

394. "All co-parceners have an equal claim to immovable property, whether they be separated or live together. Therefore, one of them is not competent to make a gift of, mortgage, or sell it"

Explanation.

395 The purport of this passage is, that the property, which has been only nominally divided, remains common to all the heirs. Therefore a single person is not its absolute master. If the entire property be divided, his act, whatever it be, is lawful.

Another explanation.

396. Some thus explain the foregoing passage. In order to remove any doubt as to a division having taken place, the consent of the divided co-parceners shall be taken when the gift, mortgage, or sale of the immovable property is made.

Illustration from the mode in which transfer of land is made.

Why the consent of the inhabitants of the frontier is necessary.

397. The passage, *which declares* that land goes to another person's possession by the following six ways,—consent of the inhabitants of the village where it is situated, that of kinsmen, that of the chief of the district, and that of shareholders, and the gift of gold and water,—means that the consent of the inhabitants of the village where the land is situate, of the kinsmen, and of the shareholders, is necessary for making the gift known to all. The consent of the chief of the district is necessary for removing any dispute with regard to boundaries.

Why gold and water are presented.

398. The object of the gift of gold and water is *to evince* that, *though* land cannot be sold, but may be mortgaged by consent; yet if, notwithstanding this prohibition, and the blessing and enjoyment of paradise which await both him that gives and him that takes land, there be any necessity for a sale, it shall be sold in the form of a donation, by giving gold and water on the land.

ON THE ASCERTAINMENT OF PARTITION.

How doubt regarding partition among co-heirs is to be removed.

399. Narada says: "if there be any doubt with regard to partition among co-heirs, it may be removed by kinsmen who are the witnesses to it, by the partition deed, and by distinct income and expenditure, and so forth. When the brothers live together, only one of each set of religious

ceromonies is performed by all of them. But after partition they separately celebrate religious rites Divided partners give or receive things in mortgage, separately perform ceremonies every new moon, and so for h, and contract or give loans, without consulting each other."

400. "Divided brothers can be witnesses to the concerns of each other, can be sureties for each other, can make or receive presents; but undivided ones cannot do so. Those who perform the abovementioned deeds out of their own stock, shall be known as separated, even if there be no partition deed."* **Divided brothers can be witnesses as to each other, and act independently.**

401. When one becomes a witness when another contracts a debt or becomes surety, or when one grants and **Partition denoted by transactions with each other.**

402 Yajnyavalkya says that, if there be any doubt about partition, it may be removed by kinsmen witnesses the partition deed *(yatuka)*, different houses and fields. **Yajnyavalkya on the removal of doubt about partition.**

403 *Yatuka* means separate It is derived from *yu* which means *unmixed*. **Explanation.**

The purport of the above is that the aforesaid transactions cannot take place without partition. Therefore partition will be determined by them.

404. Brothers husband and wife, father and son, are not competent to be each other's sureties or witnesses, or to contract debts between themselves when they live together. **Mutual transactions denote separation of interests.**

405 Apastamba says, that there should not be division between the husband and wife. **There should not be division between husband and wife.**

From this it may be argued that no mention can be made of it.

406. The argument is unreasonable, for both the husband and the wife should maintain the sacred fire; from this ceremony it appears that they have an equal right to **Explanation.**

* The following has been left untranslated · The legal transaction called partition is meant by Bibhaga Dharma Kinsmen *i e.* witnesses of the partition. Partition deed means deed determining shares and allotments Prithakkarya means separate income and expenditure &c., after partition. Dharma means religious ceremonies such as the Vaisvadeva. Thus donations and receipt without reference to one another the purchase of beasts and the like, acquisition of property, separate house, separate fields, separate receipt and mortgage and the like, those indicate separation Pakdharma means Parvana and the like; A gama means acquisition of property; Byaya means disposal of wealth.

this, or, in other words, there can be no division. The man who makes *Yaga* being invested with the *mekhala*, or sacred threads made of *kusa*, and his wife being invested with the rope with which the ploughshare is tied, their priest shall complete it. The wife shall look at the sacred *ghee*, and the husband shall bind the *Veda*. According to these *Vedic* rules, both the husband and the wife have an equal claim to matters concerning *Vedas* and to ceremonies prescribed in the *Dharma Shastras*, to marriage and daily domestic duties. And both of them equally enjoy God's blessing and suffer the consequences of his displeasure.

For these reasons, the doctrine that husband and wife have no division of property cannot be correct.

Where Apastamba's text applies.

407. Apastamba's text refers only to ceremonies and *yagas*. He has concluded with saying that, after marriage, husband and wife have an equal title in all acts, and are equally heirs of God's blessing, and equally liable to His displeasure.

The title of the wife to property is supposititious

408. The title of the wife to property is mentioned in the *Adhikarama* about wives. Hence she may claim partition with her husband.

409. This is not actually the case For wife, slave, and son have no property of their own. From this it must be known that the wife has no right to property.

Her title to religious ceremonies with her husband is only mentioned.

In the *Adhikarana* her title to *join in* the religious ceremonies of her husband is merely mentioned.

The Ratnakara on the point.

It is said in the *Ratnakara*: That division of property may take place between husband and wife, appears from the following text: "Wives should be made equal sharers."*

How divided partners may be known.

410. Vrihaspati says: "Divided partners separately acquire wealth and spend it, contract debts or lend money, and purchase or sell things" The meaning of this is that those who purchase things from, or sell them to, each other, are understood to be separated.

* The correct translation of the paragraph 409 is "If it is not specifically prohibited by texts. There is no such prohibition. There is the text the wife, slave and son these three have no property of their own." The meaning is that in the Adhikarana about wives refers to the fact that in every sacrifice the wife being associate has the right and that Adikarana does not purport to bar the right of common to wealth. On account of its reasonableness and because there is no text leaving it, there may be partition between husband and wife from the text "wives should be made equal sharers." So says the Ratnakara.

DUTIES AND RIGHTS OF DIVIDED PARCENERS.

411. Narada speaks of these in the following manner:—If any have several sons, and these are not re-united after partition, they shall separately perform *Dharma*, *Krya*, *Karma* and *Guna*. Nareda on the duties of divided shareholders.

412. *Dharma* means the daily duties, such an hospitality, and the like. Dharma, Krya, Karma, Guna, defined.

Krya means contracting debts or lending money, and so forth.

Karma means the support of the family, and so forth.

Guna means service.

413. Divided parters are competent to give away, sell, or to do what they please with their respective property, for then they have becomes its lords. Divided partners can dispose of their property at their pleasure.

विवादचिन्तामणिः ।

———:०:———

अथ दायविभागः ।

तत्र मुख्यकालमाह मनुः ऊर्द्ध्वं पितुश्च मातुश्च समेत्य भ्रातरः समं । भजेरन्-पैतृकं ऋक्थमनीशास्ते हि जीवतोः । समं तुल्यं न तु विंशोद्धारादीति यावत् । न च प्रमीतपितृविभागमुपक्रम्यैव मनुना विंशोद्धारादिकथनात्कथं तुल्यांशतेति वाच्यं तस्य गुणवज्ज्येष्ठपरत्वात् विंशोद्धाराकाङ्क्षिज्येष्ठपरत्वाद्वा । ननु यद्धनं पितुः स्वातन्त्र्यविषयस्तस्य तत्सत्वे तदिच्छयैव विभागइति । तद्विभागः पितुरूर्द्धमित्यस्तु मातुरूर्द्धमिति कथं मातुस्तत्रास्वत्वात् । न च विभागमुपक्रम्य अस्वतन्त्राः पितृमन्तो-मातर्य्येवमवस्थिताया इति शङ्खवचनादस्त्वेवमिति वाच्यं अस्य गुणवन्मातृस्तुपितरत्वात् न हि अस्वामिनोऽप्यपेक्षा युक्तिमतीति चेन्नैवं पैतृकमित्यत्रैकशेषेण मातृधनस्याप्यु-पस्थितेः मातृधनएव तदूर्द्धगमनापेक्षायामनेनोक्तत्वात् । अथ पितरौर्द्ध्वं गते पुत्राविभजेयुर्धनं पितुः । मातुर्दुहितरोऽभावे दुहितॄणां तदन्वयाः । इति नारदवचनेन मातृधने दुहितॄणां तदभावे दौहित्राणामेव ग्रहणाधिकारबोधनान्न पुत्रस्य ग्रहणाधिकार इति चेन्न अस्यान्ययोगव्यवच्छेदाभावात् । अतएव जनन्यां संस्थितायाञ्च समं सर्व्वे सहोदराः । भजेरन्मातृकं रिक्थं भगिन्यश्च सनाभयः इति मनुरपि समुच्चयमेवाह । एवञ्च पितुः स्वातन्त्र्यविषयधनं पितरि प्रमीते विभजनीयं सति तु तस्मिन्नुच्छरणीयं । तदुक्तं शङ्खेन नाकामे पितरि रिक्थभागोवृद्धे विपरीतचेतसि रोगिणिवेति । विपरीतचेतसि विप्लुतान्तःकरणे क्षमे तु तस्मिन् जीवति च तदिच्छयैव विभजनीयमितिवक्ष्यते । अथवा मृते पितरि ज्येष्ठं पुरस्कृत्य वर्त्तेयु स्तदाह मनुः ज्येष्ठएव तु गृह्णीयात्पित्र्यं धनमशेषतः । शेषास्तमुपजीवेयुर्यथैव पितरं तथा । योवाशक्तस्तं पुरस्कुर्युस्तदाह नारदः बिभृयाद्वेच्छतः सर्व्वान् ज्येष्ठोभ्राता यथा पिता । भ्राता शक्तः कनिष्ठोवा शक्त्यपेक्षः कुले स्थितिः । धर्म्मार्थंवा विभजेरन्स्तदाह मनुः एवं सह वसेयुर्वा पृथग्वा धर्म्मकाम्यया । पृथग्विवर्द्धते

धर्म्मस्तस्माद्धर्म्या पृथक्क्रिया। कथं विभागे धर्म्मवृद्धिस्तत्र बृहस्पतिः एकपाकेन वसतां पितृदेवद्विजार्च्चनं। एकं भवेद्विभक्तानां तदेव स्याद्गृहे गृहे। असाधारणो भूतेन विभक्तेन धनेन भाग्य तरनेरपेक्ष्येण स्वमात्रेच्छयैज्याद्यनुष्ठानेन विभागे धर्म्मवृद्धिः।

अथ जीवत्पितृकविभागः तत्र पुत्रान् विभजेरन्नित्यधिकारे नारदः मातुर्निवृत्ते रजसि प्रत्तासु भगिनीषु च। निवृत्ते रमणे चापि पितर्य्युपरतस्पृहे। प्रत्तासु विवाहितासु रमणे रतिसामर्थ्ये उपरतस्पृहे विषयस्पृहाशून्ये। याज्ञवल्क्यः विभागञ्चेत्पिता कुर्यात्स्वेच्छया विभजेत्सुतान्। ज्येष्ठं वा श्रेष्ठभागेन सर्व्वे वा स्युः समांशिनः। इयञ्च स्वेच्छा स्वार्ज्जिते। तदाह विष्णुः पिता चेत्पुत्रान्विभजेत्तस्य स्वेच्छा स्वयमुपात्तेऽर्थे। स्वयमुपात्तं स्वार्ज्जितमित्यर्थः। तद्वत्स्वाम्युत्क्रमणेऽपीति मनुवचनानुरोधात् तत्र पितृद्रव्यानुपरोधेनेतत्वं तदुपघ्नेनार्जितस्य तु तत्साधारण्यमेव। तथा च पित्रा पूर्व्वपुरुषद्रव्यानुपघ्नेन यदर्जितं तस्य समविभागे विषमविभागे चाविभागे पितेव प्रभुः सएव विभागस्तदिच्छावशादेव अनीशताप्यत्रैव पुत्राणां। तदाह मनुः पैतृकन्तु पिता द्रव्यमनवाप्तं यदाप्नुयात्। न तत्पुत्रैर्भजेत्सार्द्धमकामः स्वयमर्ज्जितं। पितृद्रव्यमपि परग्रस्तं यत्पित्राभ्युद्धृतं यच्च स्वयमर्ज्जितं। तदुभयत्र पितुरिच्छयैव पुत्राणां भागेन त्वनिच्छयेत्यर्थः। तथा पैतामहं हृतं पित्रा स्वशक्त्या यदुपार्ज्जितं विद्याशौर्य्यादिना प्राप्तं तत्र स्वाम्यं पितुः स्मृतं। प्रदानं स्वेच्छया कुर्य्याद्भागञ्चैव ततोधनात्। तदभावे तु तनयाः समांशाः परिकीर्त्तिताः। हृतं परैरपहृतं पितामहेन चाशक्यानीहृतं पित्रा तदुद्धृतं यच्च पिता विद्याद्यर्ज्जितं तस्य विभागे दाने च पितुरेव इच्छाधीनत्वं। एवञ्च विद्याप्राप्ते तथा प्राचीनधनानुपघ्नेन शौर्य्येण प्रकारान्तरेण वार्ज्जिते तथा तदनुपघ्नेनाभ्युद्धृते च धने पितुरिच्छयैव दानविभागादिरिति। एवंविधएव धने ज्येष्ठाद्यधिकदाने स्वभागाधिकग्रहणे च पितुरिच्छा। एवंविधद्रव्यएव याज्ञवल्क्योक्तासमांशितापि। विभागञ्चेत्पिता कुर्य्यात्स्वेच्छया विभजेत्सुतान्। ज्येष्ठं वा श्रेष्ठभागेन सर्व्वे वा स्युः समांशिनः। इति वचनस्य पितृस्वातन्त्र्यविषयमेव धनमधिकृत्य प्रवृत्तत्वात्। अत्रैव समांशकरणपक्षे विशेषमाह सएव यदि कुर्य्यात्समानंशान्पत्न्यः कार्य्याः समांशिकाः। न दत्तं स्त्रीधनं यासां भर्त्रा वा श्वशुरेण वा। अत्रोपक्रमे पितुर्विभागकर्त्तृत्वेनोपस्थितत्वात् तत्प्रतियोगिकमेव पत्नीत्वमवगम्यते समांशिका इति याभ्यः स्त्रीधनं दत्तं तत्सम-धनवत्योऽन्या अपि पत्न्यः पित्रा कार्य्याः यदा तु स्वयमधिकं गृह्णाति पुत्रेभ्यः किञ्चिद्ददाति तदा स्वभागादेव तावद्धनं पत्न्या ताभ्योदद्य। अतएव यदि कुर्य्यात्स-मानंशानिति समांशकरणपक्षएव पृथग्दानमुक्तं। हारीतः स्वल्पेन वा संविभज्य

भूयिष्टमादाय वसेदथ्युपदस्थेत्पुनस्तेभ्योगृह्णीयात्। उपदस्थेन्निर्द्धनोभवेदित्यर्थः इदमपि स्वार्जितपरं। द्वावंशौ प्रतिपद्येत विभजन्नात्मनः पिता। शङ्खलिखितौ स यद्येकपुत्रः स्याद्द्वावंशावात्मनः कुर्य्याद्द्विपदचतुष्पदेषु रूपमधिकं वृषभोज्येष्ठाय गृहं यवीयसेऽन्यत्र पितुरवस्थानात्। रूपं वस्तु तथा च पितांशद्वयं दासेषु श्रेष्ठमेकं एवं पशुष्वपि गृह्णीयात् एकोवृषः सगुणज्येष्ठाय पित्रवस्थानातिरिक्तञ्च गृहं सगुणकनिष्ठाय देयं। इदञ्च पितुरंशद्वयमेकपुत्रत्वे वचनयोरेकमूलत्वकल्पनालाघवात् पितुरस्वार्ज्जितधनविषयमेतत् स्वार्ज्जिते तु स्वेच्छया विभजनोयएकपुत्रत्वस्याप्रयोजकत्वात् एकपदञ्चेदं ज्येष्ठवाचि न तु सङ्ख्यावाचीति अन्यथा ज्येष्ठाय यवीयसइति विरुद्ध्येत तस्मात्सगुणज्येष्ठकनिष्ठावुक्तोद्धारभाजौ कार्य्यौ अन्ये पुत्राधनेषु समांशाः पिता तु सोद्धारद्व्यंशभागिति सङ्क्षेपः। आपस्तम्बः एकधनेन ज्येष्ठं तोषयित्वा जीवन्पुत्रेभ्योविभजेत्समं। जीवत्यदान्मृतस्य पत्न्याभागोनास्ति तत्पुत्रस्य तु सोऽस्ति आत्मा वै पुत्रइत्यभिधानात् वाक्यान्तराञ्च। जीवन्निति तु रत्नाकरे। पाठः सच न युक्तः विभागकर्त्तृतयैव जीवनस्य प्राप्तत्वेन निरर्थकत्वात् एकधनेन श्रेष्ठधनेन। ज्येष्ठे देवल. वह्निर्वर्षेषु चारित्र्याद्यमजे पूर्वजन्मतः। तस्य जातस्य यमयोः पश्यन्ति प्रथमं मुखं। सन्तानः पितरश्चैव तस्मिन् ज्येष्ठं प्रतिष्ठितं। यस्य सवर्णाजातस्य मुखं प्रथमं पश्यन्ति तस्मिन्सन्तानः प्रतिष्ठितः। पितरः प्रतिष्ठिताः ज्येष्ठञ्च प्रतिष्ठितमित्यर्थः तेन पितुः प्रथमापत्यं पुमान् ज्येष्ठः पतिसवर्णायान्तु पश्चादुत्पन्नोऽपि ज्येष्ठः। तदुक्तं मनुना सदृशस्त्रीषुजातानां पुत्राणामविशेषतः। न मातृतोज्यैष्ठमस्ति जन्मतोज्येष्ठ्यमुच्यते। तेन नाना वर्णासु भार्यासु पतिसवर्णायां पश्चाज्जातोज्येष्ठइत्यर्थः। तथा योज्येष्ठोविनिकुर्वीत लोभाद्भ्रातॄन् यवीयसः। सोऽज्येष्ठः स्यादभागश्च नियन्तव्यश्च राजभिः। मनुः ज्येष्ठस्य विंशउद्धारः सर्वद्रव्याच्च यद्वरं। ततोर्द्धं मध्यमस्य स्यात्तुरीयन्तु यवीयसः। तथा सर्वेषां धनजातानामाददीताग्र्यमग्रजः। यच्चसातिशयं किञ्चिद्दशतश्चाप्नुयाद्वरं। बौधायनः दशानाञ्चैकमुद्धरेज्ज्येष्ठः सममितरे विभजेरन्। पितृरिक्थहराः पुत्राः सर्वएव समांशिनः। विद्याकर्म्मयुतस्तेषामधिकं लब्धुमर्हति। अयन्तु ज्येष्ठस्य गुणवत्तरत्वे विंशांशः गुणवत्त्वे तु किञ्चित्पारितोषिकं नातिरिक्तमिति वर्त्तुलार्थः। देवलः ज्येष्ठस्य दशमं भागं न्यायतस्तस्य दापयेत्। एतच्च ज्येष्ठस्याग्निवेदवत्त्वे अन्येषाञ्च निर्गुणत्वे इति हलायुधपारिजातौ। बृहस्पतिः समन्यूनाधिकाभागाः पित्रा येषां प्रकल्पिताः। तथैव ते पालनीयाः पतितास्ते स्युरन्यथा। इदं पित्रर्जितपरं। मनुः भ्रातॄणामविभक्तानां यद्युत्थानं भवेत्सह। न तत्र विषमं भागं पिता दद्यात्कथञ्चन। इदं तुल्यव्यापारैर्भ्रातृभिरर्जिते अतोनविरोधः।

बृहस्पतिः जन्मविद्यागुणज्येष्ठो द्व्यंशं दायादवाप्नुयात्। समांशभागिनस्त्वन्ये तेषां पितृसमस्तु सः। इदं गुणवत्त्वमपि पितृवत्पालकज्येष्ठविषयं। तथा पितृरिक्थहराः पुत्राः सर्व्व एव समांशतः। विद्याकर्म्मयुतस्तेषामधिकं लब्धुमर्हति। व्यासः साधारणं समाश्रित्य यत्किञ्चिद्वाहनायुधं। धनं शौर्य्यादिना प्राप्तं भ्रातरस्तत्र भागिनः। तस्य भागद्वयं देयं शेषास्तु समभागिन.। शौर्य्यादिनाऽसाधारणोपायेनापि चेत्साधारणधनोपश्लेषेणार्ज्जयति तदार्ज्जको द्व्यंशभागित्यर्थः। वशिष्ठ. येन चैषां स्वयमुपार्ज्जितं स द्व्यंशमाहरेत्। इदमपि पूर्ववत्। याज्ञवल्क्यः सामान्यार्थसमुत्थाने विभागस्तु समः स्मृत। अनेकपितृकाणान्तु पितृतोभागकल्पना। सामान्येति सामान्यस्यार्थस्य कोऽपिभागी यदि कृषिवाणिज्यादिना वर्द्धनं करोति तदाऽपि तस्यांशाधिक्यमित्यर्थः इदन्त्वन्येषामप्येकरूपत्वे अन्यथा वशिष्ठविरोधः स्यादिति द्रष्टव्यं। अनेकेति यदि त्वविभक्तानामेव भ्रातॄणां प्रमीतानां प्रत्येकं बहवः पुत्राः कृष्यादिना साधारणधनं कुर्व्वन्ति तदा ते पितृवन्न प्रत्येकं भागभाजः किन्त्वेकजाः सर्व्वेपि स्वपितृमात्रभागभाजइत्यर्थः। नारदः कुटुम्बार्थेषुचोद्युक्तस्तत्कार्य्यं कुरुते तु यः। स भ्रातृभिर्बृहणीयोग्रासाच्छादनवाहनैः। यः कृषिवाणिज्यादिना कुटुम्बार्थे व्यापृतस्तदाश्रमं सवर्द्धयति स भाग्यन्तरसमभागं लभते स्वतस्तस्यायासानुसारेणान्नवस्त्रादिना भागिभिर्व्विलक्षणेन पूरणं कर्त्तव्यमित्यर्थः। मनुः भ्रातॄणां यस्तुनेहेत धनं शक्तः स्वकर्म्मणा। सनिर्भाज्यः स्वकादंशात्किञ्चिद्दत्त्वोपजीवनं। यः स्वकर्म्मणा स्वव्यवसायेन जीवितुंशक्तः साधारणं धनं विभज्य न गृह्णीयात् किन्तु त्यजेत् सभ्रातृभिर्गृहीतभागैः स्वस्वभागादूनमाकृष्य पूरणीयइत्यर्थः। पूर्व्वनारदवाक्यस्याप्ययमेवार्थ इति हलायुधः। प्रकाशकारस्तु येन भागिषु धनार्थं व्यापृतेषु आलस्यादिना न व्याप्रियते स व्यापारजनिताद्धनाद्बहिः कार्य्योमूलधनमात्रभागभागी कर्त्तव्यइत्यर्थकतया मनुवाक्यमिदं व्याख्यातवान्। कात्यायनः अविभक्तेऽनुजे प्रेते तत्सुतं रिक्थभागिनं। कुर्व्वीत जीवनं येन लब्धं नैव पितामहात्। लभेतांशं स्वपित्र्यं तु पितृव्यात्तस्य वा सुतात्। स एवांशस्तु सर्व्वेषां भ्रातॄणां न्यायतोभवेत्। लभेत तत्सुतोवापि निवृत्तिः परतोभवेत्। अनुजे भ्रातरि तत्सुतं भ्रातृजं जीवनं भागः कीदृशं भागं भ्रातृजोलभते इत्यपेक्षायामाह पित्र्यंशमिति तत्सुतः यस्य धनं विभज्यते तस्य प्रपौत्रः तथा च गृह्णिणोधनं पुत्रसङ्ख्यया विभजनीयं तेन पुत्रस्य योभागः सतेन तत्पुत्रैर्व्वा पौत्रैर्व्वा ग्राह्यः निवृत्तिरिति न तु तत्प्रपौत्रैरित्यर्थः इदं सहवासपरं। एवं च प्रमीतस्य पत्नी न भागभाक् अनभिधानात्। देवलः अविभक्तविभक्तानां कुल्यानां वसतां सह। भूयोदायविभागः स्यादाचतुर्थादिति स्थितिः। बीजिचतुर्थमभि-

व्याप्यदायभागः विभक्तानामपि संसर्गादौ सहवासे सतीयं व्यवस्था वसतां सहेति स्वरसात्। वशिष्ठः अथ भ्रातृणां दायभागीयाश्चानपत्याः स्त्रियस्तासां चापुत्रलाभात्। स्त्रियइत्यत्रापि भ्रातृणामित्यन्वयः। तथा च विधवायाः शङ्कितपुत्रायाभ्रातृभार्य्याया-भागः कर्त्तव्यः तस्याः प्रसवे जाते स भागस्तत्पुत्रस्य पुत्रे त्वनुत्पन्ने सति स भागस्तस्याः देवरादिभिरेव ग्राह्यइत्यर्थः। पितुरित्यनुवृत्तौ वृहस्पतिः तदभावे तु जननी तनयांशसमांशिनी। समांशामातरस्तेषां तुरीयांशाश्च कन्यकाः। तदभावे पितुरभावे जननी पुत्रवती मातर सपत्नीमातरोऽपुत्राः एताः सर्व्वाः पुत्रतुल्यभागाइत्यर्थः। एवां भागिनां भगिन्यश्चाविवाहिताविवाहार्थं भ्रातृंशतुरीयांशभाजइत्यर्थः। नारदः येषां तु न कृताः पित्रा संस्कारविधयः क्रमात्। कर्त्तव्याभ्रातृभिस्तेषां पैतृकादेव तद्धनात्। अविद्यमाने पित्रर्थे स्वांशादुद्धृत्य वापुनः। अवश्य कार्य्याः संस्काराभ्रातृभिः पूर्वसंस्कृतैः। संस्कारा उपनयनान्ताः। व्यासः अपुत्रास्तु पितुः पत्न्यः समानांशाः प्रकीर्त्तिताः। पितामह्यस्तु सर्व्वास्तामातृतुल्याः प्रकीर्त्तिताः। याज्ञवल्क्यः पितुरूर्द्ध्वं विभजतां माताप्यंशं समं लभेत्। कात्यायनः प्रच्छादितं तु यच्चेन पुनरागत्य तत्समं। भजेरन् भ्रातृभिः सार्द्धमभावेऽपि हि तत्कृता। अन्योन्यापहृतं द्रव्यं दुर्विभक्तं च यद्भवेत्। पश्चात्प्राप्तं विभज्येत समभागेन तद्भृगुः। चैवं साधारणं त्यक्ता योऽन्यदेशं समाश्रितः। तद्वंश्यस्यागतस्यांशः प्रदातव्यो न संशयः। तृतीयः पञ्चमोवापि सप्तमश्चापि योभवेत्। जन्मनामपरिज्ञाने लभेतांशं क्रमागतं। इदन्तु देशान्तरागतविषयं। यम्परम्परया मौलाः सामन्ताः स्वामिनं विदुः। तदन्व यस्यागतस्य दातव्या गोत्रजैर्मही।

अथ भागानर्हाः। तत्र वृहस्पतिः सवर्णाजोप्यगुणवान्नार्हः स्यात्पैतृके धने। तत्पिण्डाः श्रोत्रियाये धनन्तेषां विधीयते। मनुः सर्व्वएव विकर्म्मस्थानार्हन्ति भ्रातरोधनं। विकर्म्मस्थाविरुद्धकर्म्मासक्ताः। शङ्खः अपपात्रितस्य रिक्थपिण्डोदकानि निवर्त्तन्ते। अपपात्रितः अन्युत्कटेन दोषेण ज्ञातिभि. कृतघटापवर्ज्जनः पितृरिक्थ-ग्रहणश्राद्धतर्पणेषु नाधिकारी भवतीत्यर्थः। मनुः अनंशौ क्लीवपतितौ जात्यन्ध-बधिरौ तथा। उन्मत्तजडमूकाश्च ये च केचिन्निरिन्द्रियाः। सर्व्वेषामपि तु न्याय्यं दातुं शक्त्यं मनीषिभि। ग्रासाच्छादनमत्यन्त पतितोह्यददद्भवेत्। यद्यर्थिता तु दारैः स्यात् क्लीवादीनां कथञ्चन। तेषामुत्पन्नतन्तूनामपत्यं दायमर्हति। निरिन्द्रियाः पाणिपादादिरहिताः श्रौतस्मार्त्तक्रियानधिकारिणोदायानर्हाइति वर्त्तुलार्थः। तत्-पुत्रादिस्तु पतितोत्पादितवर्ज्जं तदर्हः। याज्ञवल्क्यः पतितस्तत्सुतः क्लीवः पङ्गु-रुन्मत्तकोजड। अन्धोऽचिकित्स्यरोगार्त्ताभर्त्तव्यास्तु निरंशकाः। अचिकित्स्य-

कुष्ठादिमन्तोदायानर्हाः। औरसः क्षेत्रजश्चैषां निर्दोषाभागहारिणः। सुताश्चैषां प्रभर्त्तव्यायावन्नो भर्तृसात्कृताः। पतितौरसाः पूर्वोत्पन्नाएव। अन्यौरसाउत्तरजाअपि सुताः पुत्राः भर्तृसात्कृताः परिणीताः क्लीवादेः पत्नीः प्रत्याह अपुत्रायोषितश्चैषां भर्त्तव्याः साधुवृत्तयः। निर्व्वास्याव्यभिचारिण्यः प्रतिकूलास्तथैव च। एषां क्लीवादीनां प्रतिकूलाविषादिप्रदाः। नारदः पितृद्विट् पतितः षण्डोयश्च स्यादौपपातिकः। औरसाअपि नैतेंऽशं लभेरन् क्षेत्रजाः कुतः। पितृद्विट् पितरि जीवति तत्ताडनादिकृत् मृतेतच्छ्राद्धादिविमुखः। दीर्घतीव्रामयग्रस्ताजडोन्मत्तान्धपङ्गवः। भर्त्तव्याः स्युः कुलस्यैते तत्पुत्रास्त्वंशभागिनः। दीर्घं यक्ष्मादि तीव्रं कुष्ठादि जडोनिर्व्विवेकः। देवलः मृते पितरि न क्लीव कुष्ठ्युन्मत्तजडान्धकाः। पतितः पतितापत्यं लिङ्गी दायांशभागिनः। तेषां पतितवर्ज्जानां भक्तवस्त्रं प्रदीयते। तत्पुत्राः पितृदायांशं लभेरन्दोषवर्ज्जिताः। मृतइत्युपलक्षणं लिङ्गी अतिशयेन कपटव्रतधारी। दोषोभागानर्हताप्रयोजकः। वशिष्ठः अनंशाआश्रमान्तरगताः। आश्रमान्तरं गार्हस्थ्यात्। कात्यायनः अक्रमोढासुतश्चैव सगोत्राद्यश्च जायते। प्रव्रज्यावसितश्चैव न रिक्थं तेषु कर्हिचित्। सवर्णाप्रक्रमेण विवाहः शास्त्रीयः तदतिक्रमोढायाअपि सगोत्रायाः पुत्रः तथा प्रव्रज्यां गृहीत्वा ततोभ्रष्टः एते भागानर्हाइत्यर्थः तत्राद्ये विशेषमाह स एव अक्रमोढासुतस्तृक्थी सवर्णश्च यदा पितुः। अक्रमोढासुतः पितुः सवर्णोभागभागित्यर्थः। तदयं सङ्क्षेपः विरुद्धकर्म्मासक्तः उत्कटदोषेणापपातितः पतितः क्लीवः तथा अप्रतिक्रियं आन्ध्यं बाधिर्य्यमौन्मत्त्यं जडत्वं मूकत्वं पाणिपादादिहीनत्वं वा येषां ते तथा कुष्ठादिमान् पितृद्विट् राजयक्ष्मी अतिशयेन कपट व्रतधारी आश्रमान्तरगतश्च एते भागानर्हाः एतेषां पुत्राः पतितजनितवर्ज्जं भागानर्हत्वप्रयोजकदोषरहिताः सन्तोभागभाजएव।

अथासंस्कृतसंस्कारः। तत्र व्यासः असंस्कृतास्तु ये तत्र पैतृकादेव तद्धनात्। संस्कार्य्याभ्रातृभिर्ज्येष्ठैः कन्यकाश्च तथाविधाः। नारदः अविद्यमाने पित्रर्थे स्वांशादुद्धृत्य वा पुनः। अवश्यकार्य्याः संस्काराः भ्रातृभिः पूर्वसंस्कृतैः। याज्ञवल्क्यः असंस्कृतास्तु संस्कार्य्याभ्रातृभिः पूर्वसंस्कृतैः। भगिन्यश्च निजादंशाद्दत्वांशं तु तुरीयकं। मनुः स्वेभ्योंऽशेभ्यस्तु कन्याभ्यः प्रदद्युर्भ्रातरः पृथक्। स्वात् स्वादंशाच्चतुर्भागं पतिताः स्युरदित्सवः। स्वेभ्योभ्रातृभ्यस्तेन कन्याभ्यस्तत्सजातीयभ्रातृभागाच्चतुर्थभागमाकृष्य भ्रातरोदद्युरित्यर्थः। अत्र चतुर्थभागदानमविवक्षितं किन्तु यावता संस्कारोनिर्व्वहति तावद्देयं। अनूढामान्तु कन्यानां स्ववित्तानुरूपेण संस्कारं कुर्य्यादिति विष्णुवचनात्। रत्नाकरादयोप्येवं।

अथ विभाज्यं। तत्र कात्यायनः पैतामहञ्च पित्र्यञ्च यत्किञ्चित्स्वयमर्ज्जितं। दायादानां विभागे तु सर्व्वमेतद्विभज्यते। स्वयमर्ज्जितं पितृद्रव्योपघ्नेषेण। नारदः यच्छिष्टं पितृदायेभ्योदत्त्वर्णं पैतृकंततः। भ्रातृभिस्तद्विभक्तव्यमृणी न स्याद्यथापिता। पितृदायः पित्रा दातुमङ्गीकृतः एवञ्च पित्र्यर्णं यत्तत्परिशोध्य पश्चाच्छेषं वण्टनीयमित्यर्थः।

अथाविभाज्यं। तत्रमनुः विद्याधनन्तु यद्यस्य तत्तस्यैव धनं भवेत्। मैत्र-मौद्वाहिकञ्चैव माधुपर्क्किकमेव च। मैत्रं मित्रत्वपुरस्कारेण यल्लब्धं औद्वाहिकं वक्ष्यते माधुपर्क्किकं मधुपर्ककाले पूज्यतया लब्धं अर्हणादि। मनुविष्णू अनुपघ्नन्-पितृद्रव्यं श्रमेण यदुपार्ज्जितं। स्वयमीहितलब्धञ्च नाकामोदातुमर्हति। श्रमः सेवादिः ईहितं कृष्यादि उपलक्षणञ्च तत् साधारणधनानुपघ्नेषेणार्ज्जितमर्ज्जकस्या-साधारणं भवतीत्यर्थः। व्यासः पितामहेन यद्दत्तं पित्रा वा प्रीतिपूर्वकं। तस्य तन्नापहर्त्तव्यं मात्रा दत्तञ्च यद्भवेत्। तथा अनाश्रित्य पितृद्रव्यं स्वशक्त्याप्नोति यद्धनं। दायादेभ्योन तद्दद्याद्विद्यया लब्धमेव च। अनुपघ्नेषार्ज्जितञ्च विद्यार्ज्जितञ्च द्वयमप्यविभाज्यमित्यर्थः विद्ययापि साधारणधनानुपघ्नेषेण यदर्ज्जितं तदेवाविभाज्य-मिति प्रकाशकारः। तन्न उभयोपादानानर्थक्यापत्तेः। रत्नाकरादयोऽप्येवं। मनुः वैद्योऽवैद्याय नाकामोदद्यादंशं स्वतोधनात्। पितॄं द्रव्यं समाश्रित्य न चेत्तेन तदाहृतं। इति नारदवचनेनापि पितृद्रव्योपघ्नेषेण विद्ययाप्यर्ज्जितं विभाज्यमेवेत्य-वसीयते इति। चेत्सत्यं किन्तु यत्र विद्यार्ज्जनेऽपि धनार्ज्जनवत्साधारणोपघ्नेषस्तद्विषयं अतएव तदनुपघ्नेषेण विद्यार्ज्जने सति धनार्ज्जने साधरणानुपघ्नेषोपघ्नेषावपुरस्कृत्यैवा-विभाज्यमाह कात्यायनः परभक्तप्रदानेन प्राप्तविद्योयदान्यतः। तया लब्धंधनं यत्तु-विद्याप्राप्तं तदुच्यते। अन्यतः स्वदायादभिन्नात्। तदुक्तमनेनैव कुले विनीतविद्यानां भ्रातृभिः पितृतस्तथा। शौर्य्यप्राप्तं तु यद्वित्त तद्विभाज्यं बृहस्पतिः। विद्यात्र शस्त्रशास्त्रयोः तेन पित्रादितः स्वदायादात् शास्त्रं शस्त्रं वाधीत्यतेन यदर्ज्जयति तत्र भ्रात्रन्तराणामपि भागइत्यर्थः। उपन्यस्ते तु यल्लब्धं विद्यया पणपूर्वकं। विद्याधनन्तु तद्विद्याद्विभागे न विभज्यते। शिष्यादार्त्विज्यतः प्रश्नात्सन्दिग्धप्रश्ननिर्णयात्। स्वज्ञानशंसनाद्वादाल्लब्धं प्राध्ययनाच्चयत्। विद्याधनन्तुतत्प्राहुर्विभागे न विभज्यते। शिल्पिष्वपि हि धर्म्मोऽयं मूल्याद्यच्चाधिकं भवेत्। विद्याप्रतिज्ञया लब्धमेतद्विद्याधनं भृगुः। आर्त्विज्यतः वरणाभरणादितः प्रश्नात्स्वकृतात् कृतप्रश्नस्यनिर्णयात् शास्त्रार्थसन्देहे स्वज्ञानशंसनात् प्राध्यापनाद्बहुविद्यत्वात् शिल्पार्ज्जितमपि विद्यार्ज्जितवत् अल्पमूल्येनैव यद्गुरुद्रव्यंविक्रेत्रा क्रेतरि पुरुषेऽविद्ययादत्तं तत्राप्यधिकभागः क्रेतुरसाधारणः। अहमेवैनां विद्यां वेद्मीत्यादि विद्याप्रतिज्ञा। कात्यायनः नावि-

द्यागान्तु वैद्येन देयं विद्याधनं क्वचित्। समविद्याधिकानान्तु देयं वैद्येन तद्धनं अत्र समविद्यत्वमधिकविद्यत्वं वा न दानप्रयोजकं वाक्यस्यादृष्टार्थत्वापत्तेः किन्तु तदर्ज्जितमित्यर्थं। कात्यायनः कुटुम्बं बिभृयाद्भ्रातुर्योविद्यामधिगच्छतः। भागं विद्याधनात्तस्मात्स लभेताश्रुतोऽपिमन्। तदयं सङ्क्षेपः परपिण्डोपजीवनेन परतोऽधीतेन शास्त्रेण शस्त्रेण वा विद्योपादानकाले दायादैरपोष्यमाणकुटुम्बकेन साधारणं धनमाश्रित्यापि यद्धनमर्ज्जितं तद्विद्यार्ज्जितमविभाज्यं। यादृशशौर्य्यधनमविभाज्यं तदाह सएव आरुह्य संशयं यत्र प्रसभं कर्म्म कुर्व्वते। तस्मिन् कर्म्मणि तुष्टेन प्रसादः स्वामिना कृतः। तत्र लब्धञ्च यत्किञ्चिद्धनं शौर्य्येण तद्भवेत्। ध्वजाहृतं भवेद्यत्तु विभाज्यं नैव तद्भवेत्। सङ्ग्रामादाहृतं यत्तु विजित्य द्विषतां बलं। स्वाम्यर्थे जीवितं त्यक्त्वा तद्ध्वजाहृतमुच्यते। यादृशमौद्वाहिकमसाधारणं तदाह स एव यल्लब्धं लाभकाले तु स्वजात्या कन्यया सह। कन्यागतन्तु तद्वित्तमेतद्वृत्तिकरम्परं। वैवाहिकन्तु तद्विद्याद्भार्य्यया यत्सहागतं। धनमेवंविधं सर्व्वं विज्ञेयं धर्म्मसाधकं।

अथ भागकल्पना। तत्र मनुः अविद्यानान्तु सर्व्वेषामीहातश्चेद्धनं भवेत्। समस्तत्र विभागः स्यादपित्र्य इति धारणा। ईहा कृष्यादिः समोऽविषमः तेन विंशोद्धारादिरपि नात्रास्ति। स्वयमर्ज्जितमित्यनुवृत्तौ गौतमः अविद्याः समं विभजेरन्। वशिष्टः येन चैषां स्वयमुत्पादितं स्यात्स द्व्यंशमाहरेत्। यदा बहूनां भ्रातॄणां मध्ये साधारणधनमाश्रित्य एकएव कृष्यादि नार्ज्जयति तदा तस्य द्वावंशौ शेषाणामेकैकः। व्यासः साधारणं समाश्रित्य यत्किञ्चिद्वाहनायुधं। शौर्य्यादिनाप्नोति धनं भ्रातरस्तत्र भागिनः। तस्य भागद्वयं देयं शेषास्तु समभागिनः। आदिपदस्य प्रकारवाचितया बहुव्रीहेश्चास्य तद्गुणसंविज्ञानतया च असाधारणोपायविद्यापरिग्रहः। नन्वसाधारणधनाश्रयणेनापि विद्याशौर्य्यादिना यदर्ज्जितं तदविभाज्यमिति प्रागुक्तं अनेन विरुध्येतेति चेन्न तस्य कात्यायनपरिभाषितविद्याशौर्य्यादिपरत्वात् अस्य तु तदितरप्रकारकविद्योपष्टम्भमात्रपरत्वात्।

अथ स्त्रीधनविभागे प्रणेतव्ये प्रथमं तावत् स्त्रीधनलक्षणमेवोच्यते। तत्प्रपञ्चस्तु मनुकात्यायनौ अध्यग्न्यध्यावाहनिकं दत्तञ्च प्रीतितः स्त्रियै। मातृभ्रातृपितृप्राप्तं षड्विधं स्त्रीधनं स्मृतं षड्विधमिति न्यूनव्यवच्छेदपरं। तत्र त्रिविधे कात्यायनः विवाहकाले यत् स्त्रीभ्यो दीयते ह्यग्निसन्निधौ। तदध्यग्निकृतं सद्भिः स्त्रीधनं परिकीर्त्तितं। दीयते येन केनापि सङ्कोचकाभावात्। तथा यत्पुनर्लभते नारी नीयमाना हि पैतृकात्। अध्यावाहनिकं नाम स्त्रीधनं समुदाहृतं। द्विरागमनकालेऽपत्युर्गृहं नीयमानया यल्लब्धं तदध्यावाहनिकमित्यर्थः। तथा प्रीत्या दत्तन्तु यत्किञ्चित् श्वश्र्वा

वा श्वशुरेण वा। पादवन्दनिकं यत्तुलावण्यार्ज्जितमुच्यते। लावण्यं शीलनैपुण्यादि तथा च पादप्रणताये शीलादिमत्यै वा स्त्रियै श्वशुरादिना दत्तं तृतीयं स्त्रीधनमित्यर्थः। मात्रादिदत्तन्तु त्रयं व्यक्तमेव। आधिवेदनिकं सप्तमं तदाह याज्ञवल्क्यः अधिविन्न स्त्रियै दद्यादाधिवेदनिकं समं। न दत्तं स्त्रीधनं यस्यै दत्तेत्वर्द्धं प्रकीर्त्तितं। द्वितीयेन भर्त्तुर्विवाहेन प्रथमभार्य्या अधिविन्ना भवति यस्यै पत्याऽधिवेदनकालेयद्दत्तं तदाधिवेदनिकं। विष्णुः पितृमातृसुतभ्रातृदत्तमध्यग्न्युपागतं आधिवेदनिकं शुल्क-मन्वाधेयकमिति स्त्रीधनलक्षणं। तत्राद्यानिषडुक्तानि। शुल्के कात्यायनः गृहोप-स्करवाह्यानां दोह्याभरणकर्म्मिणां। मूल्यं लब्धञ्च यत्किञ्चिच्छुल्कंतत्परिकीर्त्तितं। गृहोपस्करादिकरणोपाधिना स्त्रियागृहपतितोयल्लब्धं तच्छुल्कमित्यर्थः। तथा विवाहात्परतोयत्तुलब्धं भर्तृकुलात् स्त्रिया। अन्वाधेयन्तु तत्प्रोक्तं यल्लब्धं स्वकुला-त्तथा। एवं स्त्रीधनानि भवन्ति। एतदेव स्त्रीणां सौदायिकं तथा च कात्यायनः ऊढया कन्यया वापि पत्युः पितृगृहे तथा। भ्रातुःसकाशात्पित्रोर्वा लब्धं सौदायिकं भवेत्। पत्युरित्यत्रापि गृहइतिसम्बन्धः। सार्द्धमित्यपपाठः। भ्रातुरित्युपलक्षणं तेन कन्यया वा ऊढया वा पितृतोवा तत्कुलतोवा पतिकुलतोवा यल्लब्धं तत्कब्धं तस्याः सौदायिकमित्यर्थः। वक्ष्यमाणवृत्त्यादिकमप्येतत्प्रपञ्चः। तद्विनियोगमाह सएव। सौदायिकं धनं प्राप्य स्त्रीणां स्वातन्त्र्यमिष्यते। यस्मात्तदानृशंस्यार्थं तैर्दत्तं तत्प्रजीवनं। सौदायिके सदा स्त्रीणां स्वातन्त्र्यंपरिकीर्त्तितं। विक्रये चैव दाने च यथेष्टं स्थावरेष्वपि। पतिकुलदत्तस्थावरेष्वपि स्त्रियादानादौ स्वातन्त्र्यमित्यर्थः। सौदायिके आपस्तम्बः अलङ्कारोभार्य्यायाः ज्ञातिधनञ्चेत्येके। भार्य्यायाः स्वमिति शेषः। ज्ञातिधनं विवाहादौ ज्ञातिलब्धं पितृकुलात्पतिकुलाद्वा। अलङ्कारे मनुविष्णू पत्यौ जीवति यः कश्चिदलङ्कारोधृतोभवेत्। न तम्भजेरन्दायादाः भजमानाः पतन्तिते। पत्युरदत्तोऽपि तदनुज्ञया परिहितोऽलङ्कारस्तावतैव भार्य्यायाः स्वीयो-भवतीति मेधातिथिः। तस्मिंस्तु स्थावरे जङ्गमे च पतिकुललब्धे दानविक्रययोः स्त्रीणां स्वातन्त्र्यं पूर्वलिखितकात्यायनवचनस्वरसात्। नारदः भर्त्रा प्रीतेन यद्दत्तं स्त्रियै तस्मिन् मृतेऽपि तत्। सा यथाकाममश्नीयाद्दद्याद्वा स्थावरादृते। एवञ्च भर्तृदत्ते जङ्गमेपरं स्त्रियादानादौ स्वातन्त्र्यं न तु स्थावरेऽपीति। एवञ्च सौदायिके व्यवस्था सिद्धा। कात्यायनः भर्तृदायंमृते पत्यौ विन्यसेत् स्त्री यथेष्टतः। विद्यमाने तु संरक्षेत्क्षपयेत्तत्कुलेऽन्यथा। अपुत्राः शयनं भर्त्तुः पालयन्तो व्रतेस्थिता। भुञ्जीतामरणात्क्षान्ता दायादाऊर्द्ध्वमाप्नुयुः। भर्तृदायीभर्तृधनं तच्च तस्मिन्सति प्राइकान्तराभावात् स्त्रीस्वत्वास्पदीभूतं तस्मिन्सति तदनुज्ञया स्त्रीस्वत्वास्पदीभूतञ्च।

तथाच आह भर्तृदायं मृते पत्यौ विन्यसेत् स्त्री यथेष्टतः इति। इदन्तु स्थावरेतरपरं। स्थावरेत्याह भुञ्जीतामरणात्क्षान्ता दायादा ऊर्द्धमाप्नुयुरिति। क्षान्ता अनतिव्ययिनी अपुत्रेत्यादि तदधिकारप्रयोजकविशेषणं। द्वितीयेत्याह विद्यमाने तु संरक्षेदिति सति पत्यौ तद्धनं रक्षेदित्यर्थः। अन्यथेति पतिधनाभावपक्षे विधवा पतिकुलएव कालं नयेदित्यर्थः। एवञ्च मृतस्य पत्युः स्थावरे भार्य्यासङ्क्रान्तेऽपि न तस्या दानादौ स्वातन्त्र्यं आकाङ्क्षातौल्यात् अन्यथा तत्र कीदृशी व्यवस्था इत्याकाङ्क्षाऽपूर्णैव तिष्ठेत्। अतएवास्य वचनस्य सौदायिकप्रकरणाम्नानविरोधोऽप्यपास्तः प्रकरणापेक्षया आकाङ्क्षाया बलवत्वात् यथा पतिदत्ते स्थावरे वचनाद्दानादौ स्त्रीणामनधिकारस्तथा पत्युः स्थावरेऽपि स्त्रीसङ्क्रान्ते। एवमेव प्रकाशरत्नाकरौ। एवं पुत्रद्वारा स्त्रीसङ्क्रान्तेऽपि स्थावरे। अत्राप्याकाङ्क्षासत्वात् आह वचनस्य चाश्रुतेः। प्रकृते तु देवलः वृत्तिराभरणं शुल्कं लाभश्च स्त्रीधनं लभेत्। भोक्त्री तत्स्वयमेवेदं पतिर्नार्हत्यनापदि। वृत्तिर्ग्रासार्थं दत्तं धनं आभरणमलङ्कारः शुल्कं विवाहार्थितया कन्यायै दत्तं लाभो बन्धुभ्यो लब्धं एतत्सर्वं स्त्रीधनं। तथा वृथादाने च भोगे च स्त्रियै दद्यात्सवृद्धिकं। पुत्रार्तिहरणे चापि स्त्रीधनं भोक्तुमर्हति। स्त्रीणामननुमत्या तद्धनस्य वृथादानभोगौ न कार्य्यौ पुत्रप्रतीकारार्थं कार्य्यावेवेत्यर्थः। तदनुमत्या त्वनापद्यपि तद्ग्राह्यमित्याह सएव तदेव यद्यनुज्ञाप्य भक्षयेत्प्रीतिपूर्वकं मूलमेव स दाप्यः स्याद्यदा स धनवान् भवेत्। व्याधितं व्यसनस्थञ्च धनिकैर्वोपपीडितं। ज्ञात्वा निसृष्टं सम्प्रीत्या दद्यात्तत् स्वेच्छया पुनः। व्याध्यादिग्रस्तपत्यादिकं दृष्ट्वा स्त्रिया यत्स्वधनं प्रयुक्तं तत्स्वेच्छया पत्यादिर्दद्यादित्यर्थः। याज्ञवल्क्यः दुर्भिक्षे धर्मकार्य्ये च व्याधौ सम्प्रतिरोधके गृहीतं स्त्रीधनं भर्त्ता न स्त्रियै दातुमर्हति। सम्प्रतिरोधक इति व्याधिविशेषणं कार्य्यानुष्ठानबाधक इति तदर्थः। तथावश्यकधर्म्मानुष्ठानस्य प्रकारान्तरेण कर्त्तुमशक्यस्य निर्व्वाहार्थं पत्या यद्भार्य्यायाः स्त्रीधनं गृहीतं तन्नदेयमित्यर्थः। अस्यापवादमाह कात्यायनः अथ चेत्सद्विभार्य्यः स्यान्न च तां भजते पुनः। प्रीत्या निसृष्टमपि यत्प्रतिदाप्यः स तद्बलात्। ग्रासाच्छादनवासानामाच्छेदो यत्र योषितः। तत्र स्वमाददीत स्त्री विभागमृक्थिनां तथा। लिखितस्यति धर्म्मोऽयं प्राप्ते भर्तृकुले वसेत्। व्याधिता प्रेतकालेतु गच्छेद्बन्धुजनं ततः। अपकारक्रियायुक्ता निर्लज्जा चार्थनाशिका। व्यभिचाररता या च स्त्रीधनं न च सार्हति। भर्त्रा प्रतिश्रुतं देयमृणवत् स्त्रीधनं सुतैः। तिष्ठेद्भर्तृकुले यातु न सा पितृकुले वसेत्। अथ चेदित्यादि यदि ऋतावपि पतिस्तां न भजते यदि वा ग्रासाच्छादनानि न ददाति तदा तस्मै व्याध्यादिनिस्तारार्थमपि स्त्रिया दत्तं स्वधनं बलादपि ग्राह्यमित्यर्थः ग्रासइत्यादि

तस्मिन्मृते प्राप्तेऽपि सा भर्तृकुलएव वसेत् न तु पितृकुलं यायादित्यर्थः। अपकारे-त्यादि एतादृश्याः स्त्रीधनमप्याच्छिद्य बान्धवैर्ग्राह्यमित्यर्थः। भर्त्तेति सुगमं।

अथ स्त्रीधनविभागः। तत्र मनुः जनन्यांसंस्थितायान्तु समं सर्व्वे सहोदराः। भजेरन्मातृकं रिक्थं भगिन्यश्च सनाभयः। यास्तासां स्युर्दुहितरस्तासामपि यथांशतः। मातामह्याधनात्किञ्चित्प्रदेयं प्रीतिपूर्व्वकं। सममविषमांशं सनाभयः सहोदराः भगिन्यः कुमार्य्यएव समांशास्तदाह बृहस्पतिः स्त्रीधनं स्यादपत्यानां दुहिता च तदंशिनी। अप्रत्ता चेत्समूढा तु लभते मानमात्रकं। अपत्यानां पुत्राणां तदंशिनीति विशेषात्तुल्या समत्वलाभः समूढा विवाहिता मानमात्रकं द्रव्यानुसारेण किञ्चित्। गौतमः स्त्रीधनं दुहितॄणामप्रत्तानामप्रतिष्ठितानाञ्च। अप्रतिष्ठिता अनपत्या निर्धनभर्तृका दुर्भगाचेति रत्नाकरादयः एताश्चपुत्रा अपि पुत्रवन्मातृधनभाजः। मनुः मातुश्च यौतुकं यत्स्यात्कुमारीभागएव सः। यौतुकं विवाहकाले पित्रादितोलब्धं। वशिष्ठः मातुः पारिणाय्यं स्त्रियोविभजेरन्। पारिणाय्यं परिच्छेदादर्शकङ्कतिकादि। याज्ञवल्क्यः मातुर्दुहितरः शेषमृणात्ताभ्य-ऋतेऽन्वयः। मातुर्धनं तदृणाच्छेषं तदृणशोधनावशिष्टं दुहितरोभजेरन्ताभ्यऋते दुहितॄणामभावेऽन्वयः दौहित्रीदौहित्रौ मनुवचनानुरोधात्। ब्राह्मादिवैवाहिकं परिच्छदादिकञ्च यन्मातुर्धनं तद्विषयमेतत्। कात्यायनः दुहितॄणामभावे तु ऋक्थम्पुत्रेषु तद्भवेत्। बन्धुदत्तन्तु बन्धूनामभावे भर्तृगामि तत्। भगिन्योबान्धवैः सार्द्धं विभजेयुः सभर्तृकाः। स्त्रीधनस्येति धर्म्मोयं विभागस्तु प्रकल्पितः। दुहितॄ-णामिति पारिणाय्यं विवाहकाले यौतुकलब्धंपितृदत्तञ्च यन्मातुर्धनं तत्तस्याः पुत्र्यभावे पुत्रगामि भवतीत्यर्थः तदतिरिक्तन्तु स्त्रीधनं तस्या अभावे पुत्रीपुत्रोभयगामि इत्युक्तमेव प्राक्बन्धुदत्तमिति पितृतिरिक्तेन दत्तं यत्तद्भ्रातृभगिन्योः किन्तु कन्या तत्समांशा विवाहिता तु किञ्चिद्भागभागिनीति भगिन्यइत्यादेरर्थः अभावे पुत्री-पुत्राद्यभावे स्त्रियाधनं पतिगामीत्यर्थः। मनुः ब्राह्मदैवार्षगान्धर्व्वप्राजापत्येषु यद्धनं। अतीतायामप्रजायां भर्त्तुरेव तदिष्यते। यत्तस्याः स्याद्धनं किञ्चिद्विवाहेष्वा-सुरादिषु। अतीतायामप्रजायां मातापित्रोस्तदिष्यते। अप्रजायामनपत्यायां। गौतमः भगिनीशुल्कं सोदर्य्याणामूर्द्धंमातुः पूर्व्वं चेत्येके। आसुरादिविवाहत्रयलब्ध-विषयमेतत्। बौधायनः ऋक्थं मृतायाः कन्यायागृह्णीयुः सोदराः स्वयं। तदभावे भवेन्मातुस्तदभावे भवेत्पितुः।

अथ गुप्तप्राप्तविभागः। तत्र याज्ञवल्क्यः अन्योन्यापहृतं द्रव्यं विभक्ते यत्तु दृश्यते। तत्पुनस्ते समैरंशैर्विभजेरन्निति स्थितिः। अत्राविभक्तत्वादेव विभागे

प्राप्ते वचनारम्भोऽत्र चौर्य्यदोषाभावं ज्ञापयतीति हलायुधः। कात्यायनः अन्योन्यापहृतं द्रव्यं दुर्विभक्तञ्च यद्भवेत्। पश्चात्प्राप्तञ्च विभजेत्समभागेन तद्भृगुः। बन्धूनामविभक्तानां भोगं नैव प्रदापयेत्। समभागेन पूर्वोक्तसमभागेन भोगं गृह्यसाधारणधनभोगं भोक्ता न दाप्य इत्यर्थः।

अथ वर्णसमवायविभागः। तत्र मनुः चतुरोंऽशान् हरेद्विप्र स्त्रीनंशान् क्षत्रियासुतः। वैश्यापुत्रोहरेद्द्व्यंशमेकमंशं शूद्रासुतोहरेत्। भारते अष्टधा तु धनं कार्य्यं क्षत्रियस्य युधिष्ठिर। क्षत्रियायाहरेत्पुत्रश्चत्वारोऽशान्पितुर्धनात्। युद्धाभिचारिकं यच्चपितुरासीद्धरेच्चतत्। वैश्यापुत्रस्तु भागांस्त्रीन् शूद्रापुत्रस्तथाष्टमं। तथा पञ्चधातु धनं कार्य्यं वैश्यस्य भरतर्षभ। वैश्यापुत्रेण हर्त्तव्याश्चत्वारोंऽशाः पितुर्धनात्। पञ्चमस्तु भवेद्भागः शूद्रापुत्रस्य भारत। ब्राह्मणस्य चतुर्भार्य्यत्वे क्षत्रियस्य त्रिभार्य्यत्वे वैश्यस्य द्विभार्य्यत्वेऽयं व्यवस्था। यदि तु नैवं तदा या भार्य्या नाभूत्तत्पुत्रोचितोभागोदशसु अष्टसु पञ्चसु न कार्य्यः। युद्धाभिचारिकं अश्वखड्गादि। तथाह विष्णुः अथ चेच्छूद्रापुत्रवर्ज्जं ब्राह्मणस्य पुत्रास्तदा नवधा धनं विभजेयुः क्षत्रियादावप्येवं। वृहस्पतिः न प्रतिग्रहभूर्द्देया क्षत्रियायाः सुतायवै। यद्यप्यस्य पिता दद्यान्मृते विप्रासुतोहरेत्। वृद्धमनुः ब्रह्मदायागतां भूमिं हरेयुर्ब्राह्मणीसुताः। एवं द्विजातयः सर्व्वे तथा चैतं क्रमागतं। ब्रह्मदायागतां याजनाध्यापनप्रतिग्रहलब्धां द्विजातयस्त्रैवर्णिकाः। शङ्खः शूद्रापुत्तोऽभागोयद्देवास्य पितादद्यात्स एव भागस्तस्य गोमिथुनं चापरं दद्यात् कृष्णायसं कृष्णधान्यं तिलवर्ज्जं। मनुः यद्यपि स्यात्सपुत्रोवा यद्यपुत्रोऽपिवा भवेत्। नाधिकं दशमाद्दद्याच्छूद्रापुत्राय धर्म्मतः। ब्राह्मणक्षत्रियविशां शूद्रापुत्रोनरिक्थभाक्। यदेवास्य पिता दद्यात्तदेवास्य धनं भवेत्। सपुत्रो विद्यमानत्रैवर्णिकस्वपुत्रः अपुत्रस्तद्रहितः न रिक्थभाक्पितुरनुग्रहेऽपि न दशमांशातिरिक्तरिक्थभागिति कल्पतरुः। अत्यन्तसगुणऊढशूद्रापुत्रोऽपि न रिक्थभागिति पारिजातः। वृहस्पतिः अनपत्यस्य शुश्रूषुर्गुणवान् शूद्रयोनिजः। लभेताजीवनं शेषं सपिण्डाः समवाप्नुयुः। अनतत्यस्य पितुस्त्रैवर्णिकपुत्रशून्यस्य सपिण्डाः सन्निहितास्तदभावे व्यवहिता अपि इदञ्चानूढशूद्रापुत्रपरं अपरिग्टहीतस्त्रीत्यधिकारात्। मनुः दास्यां वा दासदास्यां वा यः शूद्रस्य सुतोभवेत्। सोनुज्ञातोहरेदंशमिति धर्म्मोव्यवस्थितः। याज्ञवल्क्यः जातोऽपि दास्यां शूद्रेण कामतोंऽशहरोभवेत्। मृते पितरि कुर्य्युस्तं भ्रातरस्त्वर्द्धभागिनं। शूद्रस्यानूढशूद्रापुत्रः पितुरिच्छया भागं लभते तदसत्वे तु ऊढापुत्रस्य वैमात्रेयस्य भागापेक्षयाऽर्द्धभागभागित्यर्थः। तथा अभ्रातृकोहरेत्सर्व्वं दुहितॄणां सुताहृते। शूद्रस्योढापुत्रदौहित्रयोरभावे सकलमेव

धनमनूढ़ापुत्रो हरेदित्यर्थः। गौतमः शूद्रापुत्रवत्प्रतिलोमास्तु। शूद्रादिना वैश्यादिजातिषु स्त्रीषु जनितः शूद्रापुत्रवज्जीविकामूलं हलकुद्दलादि किञ्चिल्लभत इत्यर्थः।

अथ विभक्तजविभागः। स च विभक्तजो द्विविधः विभागकाले गर्भस्थस्तदनन्तरञ्च जातः तत्राद्ये याज्ञवल्क्यः विभक्तेषु सुतो जातः सवर्णायां विभागभाक्। दृश्याद्वा तद्विभागः स्यादायव्ययविशोधितात्। विभागभाग्विभागार्हो भवतीत्यर्थः दृश्याद्वेति दृश्यमानाद् दृश्याद् दृश्योभयरूपाद्वा आयेन उत्तरोपचयेन व्ययेन उत्तरापचयेन विशोधितात् तेन व्ययितशेषादुदीच्यवृद्धिसहितात् प्रागप्राप्तधनात्तद्भागं लभत इत्यर्थः। विकल्पश्चायं सगुणनिर्गुणविषय इति हलायुधः। विष्णुः पितृविभक्ताः पुत्रा विभागानन्तरोत्पन्नस्य भागं दद्युः। अस्यापि पूर्ववदर्थः। द्वितीये मनुः ऊर्द्ध्वं विभागाज्जातस्तु पित्र्यमेव धनं हरेत्। संसृष्टास्तेन वा ये स्युर्विभजेत स तैः सह। यथा भ्रातृंशाद्गर्भस्थः प्राप्नोति तथा नायं प्राप्नोतीत्येवकारेणद्योत्यते किन्तु पितृधनमेव लभते अत्रापि विशेषो यदि जीवत्येव पितरि तद्भागादंशं ग्रहीतुमिच्छति पितापि च भागाकाङ्क्षी स्यात्तदा पितृभागे पितुर्विभक्तजस्य चांशौ कार्य्यौ पितरि प्रमीते तु तद्भागः समग्रो विभक्तजस्यैव पिता चेत्स्वभ्रात्रा स्वपुत्रैर्व्वा सह संसृष्टो भूत्वा प्रमीतस्तदा विभक्तजः पितुरंशं ततो लभत इति वाक्यार्थः। वृहस्पतिः पित्रा सह विभक्ता ये सापत्ना वा सहोदराः। जघन्यजाश्च ये तेषां पितृभागहरास्तु ते। अनीशः पूर्व्वजः पित्र्ये भ्रातृभागे विभक्तजः। जघन्यजा इति विभक्तजा बहवोऽपि पितृभागं लभन्त इत्यर्थः पूर्व्वज इति विभक्तः सन्नित्यर्थः। तथा पुत्रैः सह विभक्तेन पित्रा यत्स्वयमर्ज्जितं। विभक्तजस्य तत्सर्व्वमनीशाः पूर्वजाः स्मृताः। यथा धने तथार्णेऽपि दानाधानक्रयेषु च। परस्परमनीशास्ते मुक्त्वाशौचोदकक्रियाः। तदयं सङ्क्षेपः विभागसमये गर्भस्थस्य विभागानन्तरमुत्पन्नस्य विभक्तैर्व्विभागिभिः स्वस्वभागेभ्य आकृष्य भागपूरणं कर्त्तव्यं तदन्यस्य तु विभक्तजस्य पितृधनभागितेति मन्वादिमतमिति स्थितमिति।

अथ पुत्राः *। वृहस्पतिः एक एवौरसः पुत्रो धनस्वामी प्रकीर्त्तितः। तत्तुल्या पुत्रिका प्रोक्ता भर्त्तव्यास्त्वपरे सुताः। मनुः एक एवौरसः पुत्रः पित्र्यस्य वसुनः प्रभुः। शेषाणामानृशंस्यार्थं प्रदद्यात्तु प्रजीवनं। आनृशंस्यं दया प्रजीवनं भरणं। प्रथमस्तु पुत्रिकापुत्रः पश्चाज्जाते औरसे तत्समांशभाक्। तदाह स एव पुत्रिकायां

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* The texts of Yama, Narada, Manu, Baudhayana, Devala, Vishnu and Yajnavalkya about different kinds of sons and their rights are to be found at pp 639—649 of Vol I and are here omitted as unimportant.

कृतायान्तु यदि पुत्रोऽनुजायते । समस्तत्र विभागः स्याज्ज्येष्ठता नास्ति हि स्त्रियाः ।
कात्यायनः उत्पन्ने त्वौरसे पुत्रे तृतीयांशहराः स्मृताः । सवर्णा असवर्णास्तु ग्रासाच्छा-
दनभागिनः । इदं तृतीयांशहरत्वं क्षेत्रजस्य । समस्तधनभोक्ता स्यादौरसोऽपि जघन्यजः ।
विभागं नैव लभते भुङ्क्ते चतुर्थं पुत्रिकासुतः । इति ब्रह्मपुराणैकमूलत्वात् अत्युत्कृष्ट-
गुणः तत्क्षेत्रजविषयमित्यन्ये । पुत्रं प्रकृत्य वशिष्ठः तस्मिंश्चेत्प्रतिगृहीते औरसउत्पद्यते स
चतुर्थभागभागी स्याद्यदि नाभ्युदयिकेषु प्रयुक्तः स्यात् । तस्मिन्पुत्रसति प्रतिगृहीतस्तु
पुत्रः यदि स्यात् प्रयुक्तं प्रसन्नधनमिति शेषः यदि औरसेन आभ्युदयिकेषु यज्ञेषु
प्रयुक्तो न स्यात् । अत्र मन्वादिभि सर्व्वैरेव पुत्रान्तरसत्त्वेऽपि औरसस्यैव सकल
पितृधनहारकत्वमुक्तं तैरेव च विभागेऽपि तत्तदंशभागित्वमुक्तं अयञ्च विरोधः औरसस्य
सगुणत्व तेनैव सकलमृक्थं ग्राह्यं तस्यानिर्गुणत्व यथोक्तभागेन ग्राह्यमिति
समाधेयः । एवं दत्तकस्यैव क्षेत्रजस्यैव वा न्यूनाधिकांशग्रहणमपि नानामुन्युक्तं
तस्यैव सगुणत्वनिर्गुणत्वाभ्यां समाधेयं । यत्तु शूद्रेऽपि क्रमेणाधिकारबोधक-
[illegible] याज्ञवल्कीयोविरोधः सोऽपि सगुणत्वनिर्गुणत्वाभ्यां विकल्पेन वा समाधेय-
इति । एतस्मादेकस्मान्निःपितृकयोस्तु विभागे विधिः अनेकपितृकाणान्तु पि-
तृतोभागकल्पना । यस्य यत्पैतृकं रिक्थं स तद्गृह्णीत नेतरः । अपुत्रास्तु
सम्यगेव श्राद्धचिन्तामणौ प्रपञ्चिताः नेह वितन्यन्ते । शास्त्रोक्तरीतिं विना ये पुत्रास्ते
पुत्राभासत्वान्न रिक्थभाजइति ।

अथापुत्रधनग्रहणाधिकारः । तत्र विष्णुः अनपत्यस्य धनं पत्न्यभिगामि तदभावे
दुहितृगामि तदभावे मातृगामि तदभावे पितृगामि तदभावे भ्रातृगामि तदभावे
भ्रातृपुत्रगामि तदभावे बन्धुगामि तदभावे सकुल्यगामि तदभावे सहाध्यायिगामि
तदभावे ब्राह्मणधनवर्ज्जं राजगामीति । बन्धुरत्र सपिण्डः सकुल्यः सगोत्रः ।
बृहन्मनुः सपिण्डता तु पुरुषे सप्तमे विनिवर्त्तते । समानोदकभावस्तु निवर्त्तता-
चतुर्द्दशात् । जन्मनाम्नोः स्मृतेरेकेतत्परं गोत्रमुच्यते । अनपत्यस्य पुत्रपौत्रप्रपौत्रहीनस्य
पुत्रः पौत्रः प्रपौत्रो वा इत्यादिना अमीषां पाठक्रमेणैवस्वधाधिकारे सिद्धसन्तान-
शीलस्य रिक्थग्रहणस्यापि तथैवाधिकारसिद्धेः ।

एवञ्च प्रपौत्राभावे पत्न्यधिकारः । अतएव वृद्धमनुः अपुत्रा शयनं भर्त्तुः पालयन्ती
व्रते स्थिता । पत्न्येव दद्यात्तत्पिण्डं कृत्स्नमंशं लभेत सा । वृहस्पतिरपि सकुल्यै-
र्विद्यमानैस्तु पितृमातृसनाभिभिः । अपुत्रस्य प्रमीतस्य पत्नी तद्भागहारिणी ।
पूर्व्वंप्रमीताग्निहोत्रं मृते भर्त्तरि तद्धनं । विन्देत्पतिव्रता नारी धर्म्मएष सनातनः ।
जङ्गमं स्थावरं हेम कुप्यं धान्यं रसाम्बरं । आदाय दापयेच्छ्राद्धं मासषाण्मासिकादिकं ।

पितृव्यगुरुदौहित्रान् भर्त्तुः स्वस्रीयमातुलान्। पूजयेत्कव्यपूर्त्ताभ्यां वृद्धानाथातिथीन् स्त्रियः। तत्सपिण्डा बान्धवा ये तस्याः स्युः परिपन्थिनः। हिंस्युर्धनानि तान् राजा चौरदण्डेन शासयेत्। श्राद्धपरिसङ्ख्यानस्मरणात्। तस्य प्रेतस्य प्रेतश्राद्धानि प्रत्याब्दिकानि च कुर्य्यात् धनञ्चाखिलं गृह्णीयादिति वर्णनार्थः इदञ्च विभक्तपतिधनपरं। पतिव्रता साध्वी न तु पतिव्रतैव अनुमरणपर्य्यन्तं पतिव्रतात्वनिश्चयादुत्तरग्रहणाभावापत्तेः। तथा च साध्वी भार्य्या पत्युः प्रपौत्रपर्य्यन्ताभावे तद्धनार्हा।

अविभागे तु शङ्खः। भ्रातृभार्य्याणां स्नुषाणाञ्च श्वश्रूणामावृत्तानामनपत्यानां पिण्डमात्रं गुरुर्दद्याज्जीर्णानि वासांस्यविकृतानि। हारीतः विधवा यौवनस्था च नारी भवति कर्कशा आयुषः क्षपणार्थञ्च दातव्यं स्त्रीधनं सदा। संसृष्टिभार्य्यापरमिदमिति बालरूपः। अविभक्तप्रमीते पत्यौ तस्यां स्वत्वमेव नाभूत् किमियं गृह्णाति नच स्वयमेवाप्रतियोगिनी प्रापकाभावात् नचैतान्येव वाक्यानि प्रापकाणि एषां विभक्तधनपरत्वस्याप्युपपत्तेः। अतएव भ्रातृणां दायभागीयाश्चानपत्यास्त्रियस्ता आपुत्रलाभादिति शङ्खसूत्रं। भ्रातृभार्य्याया विधवायां पत्याहितगर्भायां तद्वर्गाणां विभागे प्रक्रान्ते तस्या अपि शङ्कितपुत्रप्रसवया भागमापन्नं स्यात् तस्याः पुत्रेऽनुत्पन्ने देवरादिभिर्ग्राह्यमिति रत्नाकरादौ व्याख्यातं। भारते स्त्रीणां स्वपतिदायस्तु उपभोगफलः स्मृतः। नापहारं स्त्रियः कुर्य्युः पतिवित्तात्कथञ्चन। अपहारमैच्छिकदानविक्रयादि।

पत्न्यभावे दुहितृगामि लिखितविष्णुवचनात्। नारदोऽपि पुत्राभावे तु दुहिता तुल्यसन्तानदर्शनात्। पुत्रश्च दुहिता चोभौ पितुः सन्तानकारकौ। मनुरपि यथैवात्मा तथापुत्रः पुत्रेण दुहिता समा। तस्यामात्मनि जीवन्त्यां कथमन्यो धनं हरेत् वृहस्पतिरपि अङ्गादङ्गात्सम्भवति पुत्रवद्दुहिता नृणां। तस्याः पितृधनन्त्वन्यः कथं गृह्णीत मानवः। यादृशी सा पितृरिक्थग्राहिणी तामाह सएव सदृशी सदृशेनोढा साध्वी शुश्रूषणेरता। कृताकृतावाऽपुत्रस्य पितुर्द्धनहरी तु सा। अपुत्रस्य कुमारी ऋक्थं गृह्णीयात्तदभावे चोढा चेति पराशरवचनात्तथैवात्र क्रमइति बालरूपः नचैतत्सर्व्वं पुत्रिकाविषयं अकृतेति वचनेनाकृताभिसन्धिकृता सा तु कृतैवेत्यपरमिति वाच्यं तस्याः पुत्रसत्त्वेऽपि पुत्रसमधनग्रहणाधिकारस्य मनुना विहितत्वादिति।

तदभावे मातृगामि विष्णूक्तेः। वृहस्पतिरपि भार्य्यासुतविहीनस्य तनयस्य मृतस्य तु। माता रिक्थहरी ज्ञेया भ्राता वा तदनुज्ञया। तदनुज्ञया मातुरनुज्ञया मातृपदमत्र पितुरप्युपलक्षणं तेन तदनुज्ञया मातापित्रोरनुज्ञयेति पारिजातः। वृहस्पतिः यथा पितृधने स्वाम्यं तस्याः सत्स्वपि बन्धुषु। तथैव तत्सुतोऽपीष्टे मातृमातामहे धने। मनुः दौहित्रो ह्यखिलं रिक्थमपुत्रस्य पितुर्हरेत्। सएव

दद्याद्वौ पिण्डौ पित्रे मातामहाय च। एतच्च ग्रन्थे मातापितृद्वयाभावे पत्नीदुहितर इत्यादि क्रमानुरोधात् मनुरपि अनपत्यस्य पुत्रस्य माता दायमवाप्नुयात्। मातर्य्यपि च हतायां पितुर्माता हरेद्धनं। दुहितृवन्तशून्यस्य धनं माता हरेत सकुल्यान्तशून्यस्य धनं पितामहो हरेदित्यर्थः मात्रभावे पितामह्यधिकारस्य व्यवस्थापितत्वात्।

मात्रभावे पितृगामि विष्णुवचनात्। अतैव मनुरपि पिता हरेदपुत्रस्य रिक्थं भ्रातरएव वा।

भ्रातृधिकारोऽपि विष्णुवचनादेव। अतैव गौतमः प्रेतानां धनं ज्येष्ठभ्रातुरिति।

मनुः अनन्तरः सपिण्डाद्यस्तस्य तस्य धनं भवेत्। आपस्तम्बः अपुत्रधनाधिकारी आसन्नसपिण्डस्तदभावे व्यवहितस्तदभावे आचार्य्यस्तदभावेऽन्तेवासी। याज्ञवल्क्यः पत्नी दुहितरश्चैव पितरौ भ्रातरस्तथा। तत्सुतो गोत्रजबन्धुः शिष्यसब्रह्मचारिणः। एषामभावे पूर्वस्य धनभागुत्तरोत्तरः। स्वर्य्यातस्य ह्यपुत्रस्य सर्व्ववर्णेष्वयं विधिः। पितरावित्यत्र क्रमाकाङ्क्षायामादौ माता तदभावे पिता विष्णुवृत्यैकमूलत्वात् तत्सुतो भ्रातृपुत्रः अपुत्रस्य पुत्रपौत्रप्रपौत्रशून्यस्य। कात्यायनः विभक्ते संस्थिते द्रव्यं पुत्राभावे पिता हरेत्। भ्राता वा जननी वापि माता वा तत्पितुः क्रमात्। पित्रर्ज्जितं पिता भ्रात्राद्यर्ज्जितं भ्रात्रादिरिति व्यवस्थितो विकल्पः। पैठीनसिः अपुत्रस्य स्वर्य्यातस्य भ्रातृगामि धनं तदभावे पितरौ लभेतां। देवलः ततोदायमपुत्रस्य विभजेरन्सहोदराः। तुल्यादुहितरोवापि ध्रियमाणः पितापि वा। सवर्णाभ्रातरोमाता भार्य्या चेति यथाक्रमं। एषामभावे गृह्णीयुः सकुल्याः सहवासिनः। तुल्या सहोदराएव सवर्णाभ्रातरोऽत्र वैमात्रेयाः। अत्र च देवलोक्तक्रमेण सह विष्णुयाज्ञवल्क्योक्तक्रमयोर्व्विरोधमाशङ्क्य यथाक्रममिति पदं देवलोयं याज्ञवल्क्योक्तक्रमानतिक्रमेणेति हलायुधेन व्याख्यातं। देवलवचनलिखनानन्तरं विष्णुयाज्ञवल्क्योक्तवचने लिखितवतः कल्पतरुकृतोऽप्येवमेवाशय। एतत्तु न मनोरमं न हि स्वोक्तक्रममुल्लङ्घ्य परोक्तक्रमोयथाक्रममिति स्वोक्तस्यार्थोभवितुमर्हतीति उपस्थितं विहायानुपस्थितपरिग्रहगौरवात् एवमपि पैठिनसिवचनविरोधापरीहाराच्च। तस्मात्-पूर्वपुरुषार्ज्जितधने विष्णुयाज्ञवल्क्योक्तक्रमस्तदन्यधने तु पैठीनस्याद्युक्तक्रमइति रत्नाकरः। बौधायनः सपिण्डाभावे सकुल्यः तदभावे आचार्य्यः अन्तेवासी ऋत्विग्वा हरेत् तदभावे राजा।

सगोत्रजाभावे बन्धुः याज्ञवल्क्यवचनात् स च स्वबन्धुः पितृबन्धुर्मातृबन्धुः। आत्मपितुः स्वसुः पुत्राः आत्ममातुः स्वसुः सुताः। आत्ममातुलपुत्राश्च विज्ञेया आत्मबान्धवाः। पितुः पितुः स्वसुः पुत्राः पितुर्मातुः स्वसुः सुताः। पितुर्मातुल-

पुत्राश्च विज्ञेयाः पितृबान्धवाः। मातुः पितुः स्वसुः पुत्रा मातुर्मातुः स्वसुः सुताः। मातुर्मातुलपुत्राश्च विज्ञेया मातृबान्धवाः। एतेषां क्रमेणाधिकारः। बालरूप एव।

ब्राह्मणधनवर्ज्जं राज्ञा ग्राह्यं तदाह मनुः अहार्य्यं ब्राह्मणधनं राज्ञा नित्यमिति स्थितिः। इतरेषां तु वर्णानां सर्व्वाभावे हरेन्नृपः। देवलः सर्व्वाभावे तदर्थं राजा हरेद्ब्रह्मस्ववर्ज्जितं। अदायकन्तु ब्रह्मस्वं श्रोत्रियेभ्यः प्रदापयेत्। अदायकं दायादशून्यं। वृहस्पतिः येऽपुत्राः क्षत्रविट्शूद्राः पत्नीभ्रातृविवर्ज्जिताः। तेषां धनहरो राजा सर्व्वस्याधिपतिर्हि सः। बौधायनः ब्रह्मस्वं पुत्रपौत्रैर्द्दन्त्यादन्यस्मा विषं। तस्माद्राजा ब्राह्मणस्वं नाददीत कथञ्चन। शङ्खलिखितौ परिषद्गामि श्रोत्रियद्रव्यं न तु राजगामि। परिषदो ब्राह्मणाः।

तदयं सङ्क्षेपः। पुत्रस्तदभावे पौत्रस्तदभावे प्रपौत्रस्तदभावे साध्वी भार्य्या तदभावे दुहिता तदभावे माता तदभावे पिता तदभावे दौहित्रस्तदभावे भ्राता तदभावे तत्पुत्रस्तदभावे आसन्नसपिण्डस्तदभावे यथाक्रमं व्यवहितसपिण्डस्तदभावे आसन्न-सकुल्यस्तदभावे व्यवहितसकुल्यस्तदभावे मातुलादि सर्व्वाभावे ब्राह्मणधनवर्ज्जं राजगामि ब्राह्मणधने तु ब्राह्मणान्तर एव धनग्रहणाधिकारीति।

याज्ञवल्क्यः वानप्रस्थयतिब्रह्मचारिणामृक्थभागिनः। क्रमेणाचार्य्यसच्छिष्य-धर्म्मभ्रात्रेकतीर्थिनः। क्रमेण प्रतिलोमक्रमेण तेन ब्रह्मचारिणो गुरुकुलस्थस्याचार्य्यः यतेः सच्छिष्यः वानप्रस्थस्य भ्रातृत्वेनानुमतोऽपरो वानप्रस्थ एव। यद्यपि अंशा आश्रमान्तरगता इति वानप्रस्थयतिनो न पैतामहादिधनसम्भवस्तथापि वानप्रस्थस्य वार्षिकसञ्चयः यतेस्तु कौपीनाद्येव धनमिति। शङ्खः न हार्य्यं स्त्रीधनं राज्ञा तथा बालधनानि च। नारदः षडागमं वित्तं बालानां पैतृकं धनं। षडागमं अध्ययनेत्यादि परिभाषितं। मनुः बालदायागतं रिक्थं तावद्राजानुपालयेत्। यावत्स्यात्स समावृत्तो यावद्वातीतशैशवः।

अथ संसृष्टधनविभागः। तत्र वृहस्पतिः विभक्तो यः पुनः पित्रा भ्रात्रा चैकत्र संस्थितः पितृव्येणाथ वा प्रीत्या स तु संसृष्ट उच्यते। अस्माकमेकतमस्यापि स्वं सर्व्वेषामस्माकं स्वमित्यभ्युपगमस्तावत्संसर्गः स च व्यवहारादीनामनन्यथासिद्धत्वा-द्व्यवहारादवगम्यते तेषां मृतभाविभवद्धनेषु एकेनार्ज्जितेष्वपि सर्व्वेषां स्वत्वानि जनयति। तत्र परिसङ्ख्यानबलात्पितृभ्रातृपितृव्यैरेव विभागपूर्व्वकं धनमिलनं संसर्ग इति प्रकाशः। तत्र आवृत्तिवाचिपुनःपदस्वरसेन विभागपूर्व्वकधनमेलनस्यैव लाघवेन संसर्गपदार्थत्वात्तेन विभागप्रतियोगिना पितृव्यपुत्रादिनापि संसर्गो लभ्यते पित्रादिग्रहणन्तु प्रपञ्चनमात्रं अत एवानास्थायां वाकार इति रत्नाकरादयः। नव्यास्तु

पृथग्धनानां धनमेलनमेव संसर्गो लाघवात् न तु प्राग्विभागे सति गौरवात् पृथग्धनत्वन्तु निसर्गतो वा विभागतो वेत्यतः संसर्गे तु संसृष्टतोरनुमतिमूलं सा च निसर्गतः पृथग्धनयोरपि न तु विभागानन्तरमेवेति अन्यथा पित्रा योविभक्तस्तदुत्तरजेन भ्राता समं संसर्गेन स्यादिदमिति चेन्न दृश्यन्ते हि तथा संसृष्टा अपीति बालं तु भागिनि मातायनुमत्यैव विभागवत् संसर्गेऽपि व्यवहारसत्त्वात्। तथा विभक्ता भ्रातरोयें च सहजीवन्ति संसृताः। पुनर्विभागकरणे ज्यैष्ठं तेषां न विद्यते। यदा कश्चित्प्रमीयेत प्रव्रजेद्वा कथञ्चन। न लुप्यते तस्यभागः सोदरस्य विधियते। या तस्य भगिनी सा तु ततोऽंशं लब्धुमर्हति। अनपत्यस्य धर्म्मोऽयमभार्य्यापितृकस्य च। संसृष्टानाञ्च यः कश्चिद्विद्याशौर्य्यादिना धनं प्राप्नोति तस्य दातव्योद्वंशः शेषाः समांशिनः। एकत्र इति संसृज्येत्यर्थः। ज्यैष्ठमिति अंशाधिकप्रयोजकहेतुसत्त्वेऽपि नांशाधिक्यमित्यर्थः। विद्यार्ज्जितत्वस्यापवादं स्वयमेव वक्ष्यति कश्चिदिति संसृष्टानामेकतमोयदि मरणेनाश्रमान्तरकरणेन वा भागानर्हो भवति तदापि स भागोन लुप्यते तर्हि स भागः किमीयोभवतीत्याकाङ्क्षायामाह सोदरस्येति संसृष्टसोदरस्येत्यर्थः। सोदर्य्याविभजेरंस्तंसमेत्यसहिताः समं। भ्रातरो ये च संसृष्टाभगिन्यश्च सनाभय इति मनुवचनैकमूलत्वकल्पनालाघवात्। तथा च सोदर्य्या अपि संसृष्टिनोऽभिमता इति भाव केचित्तु किञ्चिद्धनविभागानन्तरं संसर्गं कृत्वा ततएकस्मिन्संसर्गिणि प्रमीतेऽपि स्थालीपाकन्यायेनाविभक्तस्वापि धनेष्वंशेयत्तावधारणरूपोविभागोऽस्तएवेतिमत्वा चक्रवृद्धिकतया तस्यांशः कल्पय. सतु सोदरसंसृष्टिना ग्राह्यः तवैवानपत्यस्येत्यादिपदेदासइत्याहुस्तन्न न ह्यीयत्तावधारणं विभागफलं तस्य तत्कालीनजीवितस्यैव सिद्धत्वात् किन्त्वियत्तावधारणं तच्च चक्रवृद्धिकतया अक्षपातं विना न भवत्येव तत्कालप्रमीतस्य प्राचीनस्य सर्व्वभागित्वनिवृत्तस्य विनाशः संक्षोभो वा प्रादेशिकतत्पुरुषीयस्वत्वान्तरोत्पत्तिर्विभागफलं तच्च त्वदक्षपातविपर्य्यासेन मम मदक्षपातविपर्य्यासेनतर्व्वतिभागिनां धीयमभ्युत्थितोऽभ्युपगमस्तद्रूपाद्विभागात्स च तत्तदक्षपातोपहितस्तदक्षपातश्चाक्रमिकश्चेत्तदा राशिरेव विभक्तः अथ यदि क्रमिकस्तदा पक्वस्थालीपुलाकन्यायः सामग्रीभेदादिति। याज्ञवल्क्योऽपि संसृष्टिनस्तु संसृष्टी सोदरस्य तु सोदरः। दद्याच्चापहरेदंशं जातस्य च मृतस्य च। जातस्य जीवतइति हलायुधः। अन्ये तु पितापुत्रयोः संसर्गे पितुश्च विभागानन्तरं पुत्रे जाते पितरि च प्रमीते संसृष्टी पुत्रः पितुरंशं तस्मै जातकाय दद्यादित्यर्थमाहुः संसृष्टिनस्त्विति प्रमीतसंसृष्टिभागे संसृष्टान्तरस्य ग्रहणाधिकारः सोदरासोदरसंसर्गे तु सोदरस्यैवेति वाक्यार्थः। एवञ्च पितापुत्रयोरपि संसर्गे विभक्तपुत्रान्तरसत्वे च पितृभागं संसृष्टैव पुत्रः प्राप्नोति

नासंसृष्टी संसृष्टिनन्तु संसृष्टीत्यविशेषेणाभिधानात् विभक्तोयः पुनः पित्रेत्यादिना पितापुत्रयोरपि संसर्गकथनात् युक्तञ्चैतत् पुत्राणाम्पितृधने स्वत्वस्य विभागेन निराकृतत्वात् संसर्गि पुत्रस्य तु संसर्गेण तस्य जनितत्वादिति। न चानपत्यस्य धर्मायमिति पर्युदासश्रवणान्नैवमिति वाच्यं तस्य न संसर्गान्तरजातविषयत्वात् तथा च संसर्गिणः पितुर्भागं विभागानन्तरजः पुत्रो न भजेत् तदभावे तु संसृष्टीपुत्रो भ्रात्रादिर्व्वा न त्वसंसृष्टीपुत्र इति वचनार्थः। ऊर्द्ध विभागाज्जातस्तु पित्र्यमेव धनं हरेत्। संसृष्टास्तेन वा ये स्युर्व्विभजेत् स तैः सह इति मनुवचनात् उत्तरार्द्धेन तस्यैव पितृदायहरत्वं सिद्धं तस्यैवाभावे संसृष्टिनोऽधिकारस्य युक्तत्वात् अतएव जनीश्च: पूर्व्वजः पित्र्ये भ्रातृभागे विभक्तज इत्याप। नन्वेवं पुत्रैः समं विभज्य भ्रात्रा समं संसृज्यते ततः पुत्रमत्यस्य प्रमीतस्यास्य संसृष्टस्य भ्रातुः स्यात् न त्वसंसृष्टस्य पूर्वं विभक्तपुत्रस्येति चेदाह। संसृष्ट सापत्ने सोदरे चासंसृष्टिनि सत्याह याज्ञवल्क्यः अन्योदर्य्यस्तु संसृष्टी नान्योदर्य्यधनं हरेत्। असंसृष्ट्यपि चादद्यात्सो-दरो नान्यमातृजः। अन्योदर्य्यः सापत्नः संसृष्टीसन् अन्योदर्य्यधनं हरेत् न त्वसंसृष्टी सोदरस्त्वसंसृष्ट्यपि सन् चाददीतेत्यर्थः नान्योदर्य्यधनं हरेदिति पाठस्तु सुगमः। नान्यमातृज इत्यनुवादः। एवञ्चान्योदर्य्यस्य संसृष्टित्वं सोदरस्य तु सोद-रत्वमेव तद्ग्रहणबीजमित्युक्तं भवति संसृष्ट्यपि सन् नान्योदर्य्यधनं हरेदिति तु नार्थः संसर्गविरोधात् सम्भववाक्यमूलाध्याहार्य्यश्रुतिव्वंदमूलत्वापत्तेः। नारदः संसृष्टानां तु यो भागस्तेषामेव स उच्यते। अतोऽन्यथांशभाजस्तु निर्व्वीजिष्वितरानियात्। तेषामेव संसृष्टानामेव अतोऽन्यथा संसृष्टानामभावे अंशभाजः पुत्रानभागद्दयात् निर्व्वीजिष्वनपत्येषु संसृष्टिषु प्रमीतेषु स भागस्तदितरान् संसृष्टिनस्त्यागच्छेदित्यर्थः। संसर्गकाले य यस्य भाग आसीत्स पुनर्व्विभागकाले प्रत्यभिज्ञायमानस्तस्यैव रक्षणीय-इति पूर्व्वार्द्धस्य नार्थः संसर्गेण सर्व्वाभाव एतादृशनियमे वाक्यस्यादृष्टार्थतापत्तेः। अह. भ्रातॄणामप्रजः प्रेयात्कश्चिच्च प्रव्रजेत वा। विभजेरन् धनं तस्य शेषास्तु स्त्रीधनं विना। भरणं चास्य कुर्व्वीरन् स्त्रीणामाजीवनक्षयात्। रक्षन्ति शय्यां भर्त्तुर्यदा-च्छिन्द्युरितरासु तत्। या तस्य दुहिता तस्याः पित्र्यांशाद्भरणं मतः। आसंस्कारात्तद्-र्द्धाङ्गं परतोबिभृयात्पतिः। शेषाः संसर्गिणः इतरासु शय्यामरक्षन्तीषु व्यभि-चारिणीष्वित्यर्थः। तत् स्त्रीधनं तेन व्यभिचारिणीनां भरणं न कार्य्यं प्रत्युत स्त्रीधनमपि प्रोत्सृष्ट ग्राह्यं दुहितात्र कुमारी तस्याभरणं विवाहपर्य्यन्तं पितृधनेन कार्य्यमित्यर्थः। कात्यायनः संसृष्टानान्तु संसृष्टाः पृथक्स्थानां पृथक्स्थिताः। अभावेऽर्द्धहरास्ते योनिव्वजाऽन्योन्यभागिनः। एकस्याभावे यदपरस्यार्द्धहरत्वमुक्तं

तद्विभिन्नष्टि निर्व्वेशितिद्दि परस्परं निरन्वयापरभागभाजइत्यर्थः। तदयं प्रकरणार्थसङ्क्षेपः. संसृष्टप्रमीतस्य पूर्व्वभागी तज्जातपुत्रपौत्रप्रपौत्रान्यतमसत्त्वे स एव तद्भागभाक् तदसत्त्वे तु सकलब्रह्मचर्य्यादिविशेषणसम्पन्नाष्टविधमैथुननिवृत्ता भार्य्या अन्यात्वव्यभिचारिणी भरणीया न त्वंशहरा। तत्कन्यायास्तु विवाहनिष्पत्तिपर्य्यन्तं कर्म्म भरणञ्च पितृधनेन कार्य्यं पितुरपि सा भार्य्याविद्वरणमात्रं एतेषामसत्वेतु प्रमीतैकसंसृष्टिधनं अपरः संसृष्टी सकलमेव लभते। सोदरासोदरसंसर्गे सोदरएव संसर्गी लभते। असोदरमात्रसंसर्गे तु सोदरसत्त्वे सोदरासोदरौ तुल्यवल्लभते। अन्यतरसत्वेऽन्यतरएव। संसृष्टानान्त्वेकतमस्य संसर्गोत्तरं विद्याद्यर्ज्जिते सकलसंसृष्टविभक्तेऽप्यर्ज्जकस्य द्व्यंशित्वं संसृष्टान्तराणामेकैकांशित्वमिति। प्रकाशे। स्थावरं द्विपदं चैव यद्यपि स्वयमर्ज्जितं। असम्भूय सुतान्सर्व्वान्न दानं न च विक्रयः। ये जाता येऽप्यजाताश्च ये च गर्भे व्यवस्थिताः। वृत्तिञ्च तेऽभिकाङ्क्षन्ति वृत्तिलोपी विगर्हितः। अस्यापवादमाह। एकोऽपि स्थावरे कुर्य्याद्दानाधमनविक्रयं। आपत्काले कुटुम्बार्थे धर्म्मार्थे च विशेषतः। विभक्तस्यापि स्थावरस्य तत्साधारण्यामापदि तत्कन्यादानाद्यर्थं वा देयं वा विक्रेयमित्यर्थः। यत्तु विभक्ता अविभक्तावा दायादाः स्थावरे समाः। एकोह्यनीशः सर्व्वत्र दानाधमनविक्रये। इति विभक्तानामपि स्वांशपरिच्छेदेन भ्रातृत्वमभ्यागमेव तिष्ठति तेन तत्रैकोऽनीशः पृथग्भूतेषु स्वतन्त्रतस्य सिद्धिरित्येतत्परं। विभक्तेष्वविभक्तत्वसंशये तन्निरासाय विभक्तस्याप्यनुमतिस्तत्र कारयितव्या इत्येतदपरमित्यन्ये। यत्तु स्वग्रामज्ञाति सामन्तदायादानुमतेन च। हिरण्योदकदानेन षड्भिर्गच्छति मेदिनीति तदपि ग्रामदायादज्ञात्यनुमतिदर्शनप्रकाशनार्थं सामन्तानुमतिः सीमाविवादनिरासार्थं हिरण्योदकदानञ्च स्थावरे विक्रयोनास्ति कुर्य्यादाधिमनुज्ञयेत्यादिनिषेधाद्भूमिं यः प्रतिगृह्णाति यश्च भूमिं प्रयच्छति। उभौ तौ पुण्यकर्म्माणौ नियतं स्वर्गगामिनावित्यादिदानप्रशंसनाच्च विक्रये कर्त्तव्ये स हिरण्यमुदकं दत्वादानरूपेणैव विक्रयः कार्य्यइत्येतत्परं।

अथ विभागनिर्णयः। तत्र नारदः विभागधर्म्मसन्देहे दायादानां विनिर्णयः। ज्ञातिभिर्भागलेख्येन पृथक्कार्य्यप्रवर्त्तनात्। भ्रातॄणामविभक्तानामेकोधर्म्मः प्रवर्त्तते। विभागे सति धर्म्मोऽपि भवेत्तेषां पृथक् पृथक्। दानग्रहणपश्वन्नगृहक्षेत्रपरिग्रहाः विभक्तानां पृथक् ज्ञेयाः पाकधर्म्मागमव्ययाः। साक्षित्वं प्रातिभाव्यञ्च दानं ग्रहणमेव च। विभक्ताभ्रातरः कुर्य्युर्नाविभक्ताः परस्परं। येषामेताः क्रियालोके प्रवर्त्तन्ते स्वरिक्थतः। विभक्तानवगच्छेयुर्लेख्यमप्यन्तरेण तान्। विभागकर्त्ता धर्म्मोविभागधर्म्मः ज्ञातयोविभागसाक्षिणः भागलेख्यमंशपत्रादि पृथक्कार्य्यं पृथगायव्ययादि

विभागानन्तरीयकं धर्म्मो वैश्वदेवादिक्रिया तथा परस्परनैरपेक्षेण दानं ग्रहणं पशुक्षेत्रादि धर्मोत्पादनं गृहञ्च पृथक् चैवञ्च पृथक् परिपन्नोऽन्यधर्मादिः पाकधर्म्मः पार्वणादिः आगमो धनार्ज्जनादिः व्ययो धनविनियोगः तथैकस्य ऋणादिप्रयोगे अपरः साक्षी चेत् प्रतिभूर्वा भवेत् एकेन दत्तमपरो गृह्णाति चेत्तदा तौ परस्परं विभक्तौ ज्ञेयौ। याज्ञवल्क्यः विभागस्य तु सन्देहे ज्ञातिसाक्ष्यभिलेखितैः। विभागभावना ज्ञेया गृहक्षेत्रैश्च यौतुकैः। यौतुकैः पृथग्भूतैः यु अमिश्रणे इत्यस्य धातोरनुसारात् तेनामिश्रैर्गृहैः क्षेत्रैश्च विभागभावना ज्ञेया इत्यर्थः अनन्यथासिद्धमिदं विभागमवगमयतीति भावः। तथा भ्रातॄणामथ दम्पत्योः पितुः पुत्रस्य चैव हि। प्रातिभाव्यमृणं साक्ष्यमविभक्ते न तत् स्मृतं। एतेषां विभागात्प्राक् परस्परं प्रातिभाव्यादिव्यवहारो नेत्यर्थः। ननु जायापत्योर्विभागो न विद्यत इत्यापस्तम्बवचनात्तयोर्विभागप्रसङ्ग एव नास्तीति चेत् तौ जायापती अग्निमादधीयातामित्यादिना अन्याधाने सहाधिकारित्वात्। तथा मेखलया यजमानं दीक्षयति योक्त्रेण पत्नीं। तथा पत्नी आज्यमवेक्षते यजमानो वेदं बध्नाति। इत्यादि श्रवणात् आधानजन्याग्निसाध्यकर्म्मसु श्रौतेषु तथा कर्म्म स्मार्त्तं विवाहाग्निवित्यादि स्मरणात् जायापत्युभयसाध्यविवाहाग्निसाध्येषु स्मार्त्तेषु कर्म्मसु आवसथ्याग्निहोत्रेषु च तयोः साहित्यमधिकारः तथैव पुण्यपापजफलेष्वपि तयोः साहित्यं तत्प्रकरण एव द्विविध्यातिक्रमस्मत्सन्ततामित्यादि श्रवणात् न तु तदग्निसाध्येष्विष्टापूर्त्तेषु धनविभागेन तयोर्नास्तीति वाक्यार्थस्य शङ्कापि नास्ति आपस्तम्बवचनस्य इज्याप्रकरणे आम्नानात् पाणिग्रहणाद्धि सहत्वं कर्म्मसु तथा पुण्यापुण्यफलेषु चेति तत्रैव श्रवणात्। पत्न्यधिकरणे पत्न्या अपि धने स्वत्वमिति तस्या अपि तर्हि पत्या सह विभागो भवेत यदि ग्रामस्य स्वामिनी धान स्यादिति चेन्नैवं। अधनास्त्रय एवैते भार्य्या दासस्तथा सुत इत्यादिना तस्या अधनीत्वेऽपि हि। पत्न्यधिकरणन्तु इज्याभावे साहित्यमाधिकारिविषयं न तु तदधिकरणे योषिदधनत्ववचनबाधः तस्य न्यायत्वनवचनानामधिकत्वात् विभागन्तु दम्पत्योः पत्नीः कार्य्याः समांशिका इति वचनादिति रत्नाकरः। बृहस्पतिः पृथगायव्ययधनाः कुसीदञ्च परस्परं। वणिक्पथञ्च ये कुर्य्युस्ते विभक्ताः परस्परं। येऽन्योन्यं क्रयादि व्यवहारं कुर्व्वन्ति तेऽन्योन्यं विभक्ता वेदितव्या इत्यर्थः। विभक्तकृत्यमाह। नारदः यद्येकजाता बहवः पृथग्धर्म्माः पृथक्क्रियाः। पृथक्कर्म्मगुणोपेता न चेत्कार्य्येषु सम्मताः। विभक्ता एव संसृष्टास्तदा तेषां वैश्वदेवादिधर्म्मः कुसीदादिक्रिया परिपालनादिकं कर्म्म शुश्रूषादिगुणः एतत्सर्व्वं पृथक्कर्त्तुमर्हतीत्यर्थः। विभागफलमाह सएव स्वभागान् यदि ते दद्युर्विक्रीणीयुरथापि वा। कुर्य्युर्यथेष्टं तत्सर्व्वमीशास्ते स्वधनस्य वै।

DAYA-BHAGA.

A TREATISE ON INHERITANCE

BY

JIMUTA VAHANA

CHAPTER I

Partition of Heritage defined and explained.
Two periods of partition of the Father's wealth

1. Subject proposed.

1. Partition of heritage, on the subject of which various controversies have arisen among intelligent persons (not fully comprehending the precepts of Manu and the rest) should be explained for their information. Hear it, O ye wise !

2. Partition of heritage, described by Narada, as a head of actions.

2. First, the term Partition of Heritage *(Dayabhaga)* is expounded : and, on that subject, Narada says, "Where a division of the paternal estate is instituted by sons, that becomes a topic of litigation, called by the wise Partition of Heritage."*

ANNOTATIONS.

2. *Division of the estate*] Partition is an act adapted to ascertain property ; as will be subsequently explained Division of patrimony by sons, or a distribution of which they are the makers, is partition of heritage The wealth, in regard to which that is especially instituted, or is executed by the persons making it, with one accord, or by the intervention of arbitrators or the like, is denominated by the wise a subject of litigation. Such is the construction of the text. Srikrishna.

Or the meaning may be, in a controversy or lawsuit wherein partition of patrimony is instituted by sons, the subject of litigation is entitled division of heritage. Achyuta.

Chudamani, and the rest of the commentators on Jimuta Vahana's treatise, exhibit many variations in the reading and interpretation of the passage here cited from Narada ; and have entered into long disquisitions on the different expositions of the text. The principal disagreement is in regard to the relative pronoun.* There is not, however, any essential difference in the results of the various interpretations.

* Most copies and quotations of the text read it *yatra*, "where" or "in which." But some read *yattu*, and others *yastu* ; "but which."

3. Exposition of his text. Inheritance includes succession to the goods of any relation.

3. What came from the father is "paternal:" and this signifies property arising from the father's demise. The expression "paternal" and "by sons" both indicate any relation: for the term "partition of heritage" is used for a division of the goods of any relation by any relatives. Accordingly Narada, having premised "partition of heritage" as a topic of litigation, (§2) shows, under that head of actions, the distribution of effects left by the mother and the rest. So Manu, likewise, premising inheritance, but without employing the word father or any other specific term, propounds the division of effects of any relative.

4. Derivation of *daya*, heritage, from *da*, to

4. The term "heritage," by derivation, signifies "what is given." However, the use of the verb *(da)* is here secondary or metaphorical, since the same consequence is produced, namely that of constituting another's property after annulling the previous right of a person who is dead, or gone into retirement, or the like. But there is no abdication of the deceased and the rest in regard to the goods.

ANNOTATIONS.

Some, observes Srikrishna, interpret the pronoun *(Yatra)* in the causative seventh case, making it relate to the term 'topic of litigation' and they thus explain the text 'That subject of controversy, on account of which *a division of patrimony, or distribution of it by lots* is executed by sons, has been termed partition of heritage'

Maheswara, who adopts this interpretation, states the consequent meaning thus that topic of litigation, which consists in the ascertainment of property whether effected by arbitrators or by the parties, and for the sake of which ascertainment, a division of patrimony is executed by sons, such a casting of lots or other act separating property is called by the sages partition of heritage'

Taking the pronoun in the nominative case, either by so reading it or by the license which justifies anomalies in sacred writings, the passage is by some explained (as is remarked by commentators) 'the division of patrimony, which is instituted by sons, is called partition of heritage

After noticing the various readings, Srikrishna adds, 'certain writers, however, expound the term patrimony, in the distributive sixth case. Accordingly, the import of the text, consonantly to their opinion is "the portion of the paternal estate, for which a partition is 'instituted by sons, is division of heritage" Agreeably to this interpretation, likewise, the wealth must be understood to be the subject of the action.'†

4. *Heritage signifies 'what is given.'*] Since the verb to give signifies the will "be this no longer mine," which has the effect of vesting property in another, and since that cannot exist in the proposed case, therefore it here merely signifies any act which has the effect of vesting propert[illegible] retirement &c Achyut

† The author of the *[illegible] rahasya* gives the preference to this interpretation.

5. Definition of heritage.

5. Therefore, the word "heritage" is used to signify wealth, in which property, dependant on relation to the former owner, arises on the demise of that owner.*

6. Partition is not a splitting of the chattel; nor the separation of it from the coheir's goods.

6. Is the partition of heritage a splitting of the divided thing into integrant parts? Or does partition consist in the chattel's not being united with the heritage of a coheir? The first position is not correct, for the heritage itself would be destroyed. Nor is the second accurate: for though goods be conjoined, it may be said, "this chattel, which was before parted, is not my property, but my brother's."

7. Nor a distribution of a general right to particulars.

7. Nor can it be affirmed, that partition is the distribution to particular chattels, of a right vested in all the coheirs, through the sameness of their relation, over all the goods. For relation, opposed by the coexistent claim of another relative, produces a right (determinable by partition) to portions only of the estate: since it would be burdensome to infer the vesting and divesting of rights to the whole of the paternal estate; and it would be useless, as there would not result a power of aliening at pleasure.

8. Definition of partition.

8. The answer is: Partition consists in manifesting† [or in particularizing‡] by the casting of lots or otherwise, a property which had arisen in lands or chattels, but which

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There is not in this instance a relinquishment on the part of the person deceased, or retired &c., consisting in the will "be this no longer mine," and operating to annul the former property. Ragh, *Dayatatwa.*

5. "*Heritage" is used to signify*] The term heritage signifies by acceptation property vested in a relative in respect of wealth, in right of relation to its former owner (as son or otherwise) on the extinction of his property, Ragh. *Dayatatwa*

6. *The heritage itself would be destroyed.*] Meaning an inheritance consisting of an individual, as an ox, a slave or the like. If divided by a distribution of parts, the destruction of it would be the consequence. Maheswara

7. *Nor can it be affirmed*] The author here censures the doctrine of the *Mitakshara.* Ragh., on the *Dayabhaga.*

He canvasses the opinion of the *Maithilas* Maheswara.

8 *Partition consists*] Raghunandana, in his *Dayatatwa*, quoting Jimuta Vahana's definition to refute it, has a little varied the

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* Or according to another reading of this passage, "on the extinction of his ownership" For in some copies, and in certain quotations of the passage, it is written *tat swamyoparame*, and several of the commentators appear to have so read it But Maheswara states this as the sense of the phrase, and the other *tat swamyo parame* as the original text.

† So the term here employed, is explained by Chudamani.

‡ Achyuta and Srikrishna expound the term "making it positive, that a certain thing appertains to a certain individual."

extended only to a portion of them, and which was previously unascertained, being unfit for exclusive appropriation, because no evidence of any ground of discrimination existed.

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terms of it, by blending both the explanations proposed by that author (§ 8 and 9.) "Some," he says, "allege, that partition, which takes place by reason of the coexistence of other relatives, [who have an equal right of succession‡] is a particular ascertainment of property arisen in lands or chattels, (extending to a part only, but unfit for special use and appropriation, because grounds of discrimination are wanting;) by the casting of lots or other means, which determine that a particular chattel belongs to a particular persons." To this he objects, that "the definition is not accurate for how may it be certainly known, since no text declares it, that the lot for each person, falls precisely on that article which was already his? Again, if wealth be gained, after the father's demise, by a brother using one of two horses which belonged to the father, it is universally acknowledged that two shares of it appertain to the acquirer, and one to any other coheir. In such a case, when the original property is subsequently divided, if that very horse be obtained by the acquirer then, according to the opinion of those who affirm partial rights, the horse was already his, why then should another brother share the wealth gained by him? But, if the horse be obtained by another coheir, equal participation of wealth so acquired would be proper, since it is gained by the personal labor of the one and by the work of a horse belonging to the other."

Raghunandana then states his own definition. 'But, in fact partition is a distributive adjustment, by lot or otherwise, of the property of relatives vested in them, over the whole wealth, in right of the same relation, upon the extinction of the former owner's property. The vesting and divesting of property over the whole estate are inferred, in like manner as the divesting of partial rights over portions, and vesting of a common right over the whole are deduced in the instance of reunion of coheirs."

Srikrishna, in his commentary on the work of Jimuta Vahana, endeavours to repel Raghunandana's objection. He cites his reasoning nearly in the exact words, and replies, "The objection, which is thus proposed by the learned author, is not right For, according to the opinion of those who contend for the doctrine of partial rights, undivided is the sense of the term common * and, since the nature of it is not changed by denying a general right, the objection, alleged by the opponent, cannot be valid.'

After thus endeavouring to vindicate his author, Srikrishna proceeds to state the concurrent opinions of Harinatha, Vijnaneswara, Vachaspati Misra and others, who maintain, that "partition does annul a previous right and become the cause of new property, as inferred in the instance of partition made by a father:" adding reasons, which are similarly cited by the commentator on the *Dayatatwa*, with the remark, "that the opinion delivered by Raghunandana is conformable to that doctrine." Whence also Jagannatha, in the digest of *Hindu* law, concludes that "Raghunandana's opinion is indirectly admitted even by Srikrishna"

‡ So the sentence is supplied by the commentator Kasirama Vachaspati, who remarks, that the observation in the text is made, "because no partition would be necessary, were there no other relative."

9. Or partition is a special ascertainment of property, or making of it known [by reference of a particular share to a particular person.]

9. Its literal meaning.

10. Even in the case where a single article, as a female slave, a cow, or the like, is common to many, the property is served by separate use, in carrying burdens, or in milking, during specific periods in turn, as directed by Vrihaspati. "A single female slave should be employed on labor in the houses [of the several coheirs] successively, according to the number of shares: and water of wells or ponds is drawn for use according to need [without stint]...such property [as is regularly not divisible] should be distributed by equitable adjustment; else it would be useless [to the owners.]" These three half stanzas occur in many places, [as quotations from this author,] though not found in their regular order [in his institutes of law *]

10. The definition holds good in the case even of a single article, the right to which may be shared as provided by Vrihaspati

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9 *Or partition is &c*] This abridged definition of partition is intended by the author for a literal interpretation of the term *vibhaga*, conformably with its derivative sense, assuming that the radical verb, *bhaj*, signifies to make known, either 'because roots have numerous significations,' according to the remark of Achyuta, or "because that import is deducible from the proper meaning of the verb *bhaj* to serve or adore," as stated by Maheswara in his note on this passage.

By reference of a particular share to a particular person] So Srikrishna completes the sentence He adds "the making of property known, here, signifies the casting of lots or other operation tending to the ascertainment of the right"

10 *As directed by* Vrihaspati] Raghunandana, in the *Dayatatwa* citing the same text as propounding a distribution by difference of time remarks, that 'the use and extinction of various periodical rights to the same individual, must evidently be here admitted or else a restriction. of the general property vested in all.

Srikrishna asks, "if the articles be sold by the possessor during his own turn, without the consent of the other periodical owners, does not the buyer obtain the complete property for all the periods?" He replies, "No: such interest only as the vendor held, is vested by the purchase in the buyer, and thus the purchaser, standing in the place of the seller, has the use of the article in turn with the other proprietors."

"*In the house of the several co-heirs successively.*"] According to some copies of Raghunandana's *Dayatatwa*, the reading is on successive days *dine, dine*, instead of *grihe grihe* in the houses successively." But the latter is the reading of the passage as cited in other compilations.

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* As used in texts concerning participation in acquired property. For example "when a man acquires wealth by valor, relying on any common vehicle or weapon, the brethren shall be sharers in it." This note is suggested by an equivalent insertion in the passage itself, as quoted by the commentator on the *Dayatatwa*.

11. Partition does not create right.

11. Does it not follow from the text of Narada, ("let sons regularly divide the wealth when the father is dead") which authorizes sons to divide their father's effects after his decease, that sons have not property therein before partition? nor can partition be a cause of property, since that might be misunderstood as extending even to the goods of a stranger.

12 But the demise of a relation is its cause.

12. The answer is this: since it is the practice of people to call an estate their own, immediately after the demise of their father or other predecessor; and the right of property is acknowledged to vest without partition in the case of an only son, the demise of the relative is the cause of property Consequently there is no room for any misconstruction.

13. Acquisition of property by birth.

13. Acquisition is the act of the acquirer; and one, who has the state of ownership dependent on acquisition, is the acquirer. Is not birth therefore, as the act of the son, rightly deemed his mode of acquisition? and have not sons, consequently, a proprietary right, during their father's life, [even without his being degraded or otherwise disqualified;*] and not by reason of his demise? and therefore is it declared "in some cases birth alone [is a mode of acquisition,†] as in the instance of a paternal estate."

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The whole passage, as it is here quoted by Jimuta Vahana consists of portions of three different stanzas, which in Vrihaspati's text are remote and in a reversed order, according to the quotation of the text in the *Smriti-Chandrika*, *Kalpataru* and *Ratnakara.*

11. *Does it not follow &c*] Does partition ascertain a pre-existent right? Or does it create the right itself? To both these doctrines objections are here proposed. Sons have not property before partition for the father's property, suggested by the relative case in the phrase their father's effect," is an obstacle to it. Consequently partition cannot be the ascertainment of a pre-existent right. Srikrishna.

Therefore, the property of the father, though deceased, would subsist until partition took place. Such is the import of the objection. Admitting this, and the inference that property arises from partition alone, and that the father's property is thereby divested; what harm ensues? The author replies "partition cannot be a cause of property." Maheswara.

Nor can it extinguish a former right. For it might else be supposed, that, if strangers cast lots for the goods of one with whom they are unconnected, the property of the owner would be thereby annulled and the right vested in the strangers Srikrishna.

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* Srikrishna furnishes this clause

† Supplied on the authority of Srikrishna and other commentators.

14. That is not correct: for it contradicts Manu and the rest "After the [death of the] father and the mother, the brethern, being assembled, must divide equally the paternal estate: for they have not power over it, while their parents live."‡

14. Shown to be an erroneous supposition.

15. This text is an answer to the question, why partition among sons is not authorized, while their parents are living: namely "because they have not ownership at that time."

15. Manu, (§ 14.) denies the son's right in his father's life time.

16. It should not be argued, that the text intends want of independence, like another passage of the same author, concerning acquisitions by a wife or son:§ for there is no evidence of property then vested, but, in the other instance, dependence is rightly supposed to be meant, since property is suggested by the phrase "what they earn" or acquire.

16. His text cannot intend mere dependence and control.

17. Besides it would contradict revealed law, if these persons had not ownership even in that which is by them earned; since religious rites, enjoined by holy writ, and which must be effected by means of their own wealth, would be prevented.

17. The son's property in his own gains is requisite to his performance of religious rites therewith.

18. Devala, too, expressly denies the right of sons in their father's wealth. "When the father is deceased, let the sons divide the father's wealth: for sons have not ownership while the father is alive and free from defect."

18. Devaal denies the son's right in the goods of his father yet living.

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17. *Besides it would contradict the revealed law*] It would contradict those passages of scripture which prescribe certain fasts and other religious rites to be observed by women. Maheswara.

Neither should it be argued, that the religious rites may be accomplished with goods given for the purpose by the husband or father &c For, on that supposition, the husband's relinquishment would vest property in his wife. But, in like manner as the right vests in him immediately upon his wife's receipt of any thing from another person, so does it vest in him on her receipt of goods from himself. Srikrishna.

18. *Free from defect.*] Raghunandana, in the *Dayatatwa*, interprets "free from defect," not degraded, and cites Narada (13, 3) "If the father be lost, or no longer a householder, "&c." §32.

19. No authority declares a right by birth.

19. Besides, if sons had property in their father's wealth, partition would be demandable even against his consent: and there is no proof, that property is vested by birth alone; nor is birth stated in the law as means of acquisition.

20. Relation of father & son, & demise of the father, are causes of property.

20. In some places it is alleged: but there, by the mention of birth, the relation of father and son, and the demise of the father are mediately indicated as causes of property.

21. A right may accrue to one by the act of another; as in donation.

21. The right of one may consistently arise from the act of another: for an express passage of law is authority for it; and that is actually seen in the world, since, in the

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19. *Nor is birth stated in the law as means of acquisition* [The author apparently alludes to a passage of Gautama cited in the *Mitacshara* and which expressly declares "by birth alone a man takes ownership of "wealth so the holy instructors maintain." Accordingly the commentators, Achyuta, and Srikrishna, question the authenticity of the text and indeed it is not found in Gautama's institutes. Srikrishna says "the text of Gautama, which is cited in the *Mitacshara*, is unauthorised, or, if it be authorized, it relates to the case of one, whose father dies while the child is in the mother's womb." This commentator adds as a reason, "Else a father, who had male issue, would not be independent in regard to his own goods" He subjoins an interpretation similar to that which occurs in the *Dayatatwa* of Raghunandana, where the passage is explained in an entirely different sense upon an altered reading of it and, after proposing another exposition of it, he concludes thus "It must be therefore understood to be the implied sense that, because the relation of birth is superior to every other, a son, standing in that relation, as the right of succession to his father's wealth immediately on the extinction of his father's right"

Raghunandana's interpretation is this. 'The text of Gautama, which is cited in the *Mitacshara*, signifies, "the venerable teachers "maintain, that, on the extinction of the father's property, his son, not any other relative, may take his goods, because sons have a right to the wealth of their natural father by the very relation of birth, by which they are his issue, and which is superior to every other relation"

It does not mean, that sons have a right by birth in their father's wealth, while his own property in it subsists; for that would contradict the text of Devala.'

20. *In some places*] That is, in some books, birth is so alleged. An authentic passage of this import, by a worthy writer, does occur. Sricrishna.

21. *From relinquishment in favor of a sentient person*] Since no right of ownership arises from mere relinquishment, such as the letting loose of a young bull [at a funeral,] the author adds the condition "in favor of one who is a sentient person," Srikrishna.

case of donation, the donee's right to the thing arises from the act of the giver; namely from his relinquishment in favor of the donee who is a sentient person(*a*).

22. Acceptance of a gift is not the cause of property.

22 Neither is property created by acceptance; since it would follow, that the accepter was the giver: for gift consists in the effect of raising another's property, and that effect would here depend on the donee, in like manner as a votary, though making a relinquishment of a thing offered to a deity, is not a sacrificer; but the priest alone is so denominated, as performing the act of presenting its relinquishment, which act was the purpose of the ceremony termed a sacrifice Besides the word gift occurs in passages of law as signifying something antecedent to acceptance

For gift precedes acceptance.

23. A doubt proposed. How can the property precede the appropriation?

23. Is not receipt acceptance? for the affix, in the word *swicara*, implies a thing becoming what it before was not; and the act of making his own *(swan curvan)* what before was not his, constitutes appropriation or acceptance *(swicara)* How then can property be antecedent to that?

24. Answer receipt and acceptance are means of acquisition, tho' not creating property, but rendering it disposable.

24. The answer is, though property had already arisen, it is now by the act of the donee, subsequently recognizing it for his own, rendered liable to disposal at pleasure; and such is the meaning of the term 'acceptance' or 'appropriation' From its association with teaching, and assisting at sacrifices,* receipt *(pratigraha)* is, without question, a mode of acquisition, though it do not immediately create property: for, in the case of assisting at sacrifices and so forth, property in wealth so gained arises solely from the gift of the reward

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22. *The word gift occurs in passages of law.* The particular passage of law which is here instanced, and the initial words of which are quoted by the author, is completed, with some variation, by the commentators, Achyuta, Sricrishna and Maheswara.

"Intending in his mind a proper object of his liberality, let the giver pour water on the ground [to ratify his donation]. The occean has its bounds: but a gift has no termination"

23. *The affix implies.*] The affix *Chwi*, which affects the first member of the compound term *Swicara*, bears the import here stated.

(*a*) The correct translation of the last three lines is: it is actually seen in the world that in the case of a gift the donee's ownership in the thing given arises merely by the act of relinquishment in favour of a sentient being—Ed.

* MENU 80. 76. and many similar passages. in which these are mentioned as three modes of earning wealth.

25. Survival may constitute the right of succession. Either that, or demise, must do so.

25. Or the survival of the son, at the time of his father's demise, may constitute his acquisition. Besides, in the case of goods left by a brother or other relative, the property of the rest of the brethern or other heirs, must, however reluctantly, be acknowledged to arise either from his death or from the survival of the rest at the time of his decease.

26. Manu, before cited, declares property, on the father's demise by authorising partition then.

26. Hence [that is, because property is not vested in sons, while the father lives, or because property is not by birth, but by survival, or because the demise of the ancestor is a requisite condition,] the passage before cited, beginning with the words "after the [death of the] father," being intended to declare property vested at that period, [namely at the moment of the father's decease*] recites partition which of course then awaits the pleasure [of the successor.] For it cannot be a precept, since the same result [respecting the right of partition, at pleasure] was already obtained [as the necessary consequence of a right of property]

27. He neither enjoins partition nor restricts it to that time.

27. Nor can it be a restrictive injunction For, as that is contrary to the text of Manu "Either let them thus "live together; or let them dwell apart for the sake of religious merit;" and as it produces visible consequences *only* [not any unseen or spiritual result,] it can neither be an injunction for an *immediate* partition, nor a limitation of the time.

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26. *Recites partition*] The recital of partition is intended as an indication of property arising at that period. Srikrishna.

By the passage above cited (Manu, 9. 104) it is not understood that partition must be made on the death of the father . but it is signified, that property, which authorizes partition takes effect from his demise. Maheswara.

If property be truly vested at that period, then partition at pleasure follows of course.

An explanatory recital is introduced, for greater clearness, where the same result was already obtained from reasoning or authority. Chudamani.

For a precept teaches only what was not otherwise known. Maheswara,

27. *Nor can it be a restrictive injunction.*] If it can be understood as a precept, it should not be taken as an explanatory recital. It may therefore be a restrictive injunction. Apprehending this objection, the author obviates it. Srikrishna.

It cannot be an injunction; for Manu, by authorizing their living together. gives a sanction to their omission of partition. Maheswara.

* So all the commentators interpret this passage.

28. Besides, partition would be admissible, only at the moment immediately following the father's decease and not at any later period ; for there is not in this instance, as in that of a sacrifice on the birth of a child, an objection analogous to the hazard of the new born infant's life : and partition to be made at any time after the father's demise, while the sons live, and at their pleasure, is already obtained [as a necessary result of obvious reasoning, without need of a special precept for the purpose]

28 It would be a limitation to that particular moment

Or would be superfluous if taken with greater latitude.

29 Therefore, the text of Manu must be argued [by you*] to intend the prohibiting of partition, although the son's right subsist during the life of the father. But that is not maintainable For it would thus bear an import not its own

29. It cannot intend a prohibition in the father's life time.

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Being followed by no spiritual consequences attendant on the performance or on the omission of it, partition cannot be restricted even by a hundred texts Srícrishna.

The option cannot be restricted by a hundred passages. Chudamani.

28 *Besides partition*] Supposing it to be a limitation of time intended for spiritual ends, the author proceeds in his reasoning. Time subsequent to the father's decease may be the moment immediately following it, or any time subsequent On the first interpretation, the author says, Partition would be admissible only at the instant immediately following it The condition being exclusive it would be inadmissible at a subsequent period Might not partition nevertheless take place at a subsequent time, in like manner as the sacrifice directed to be performed when a child is born, and which should accordingly be celebrated immediately after the birth of the infant, is deferred until the period of uncleanness end ? The author replies to that, Since the period of uncleanness begins immediately after the section of the navel string, the sacrifice should be first performed like other rites on the birth. But Gobhila directs, that the breast shall be given after the section of the string and if that be deferred for so long a time, the infant's throat will be parched and his life endangered. On account of this objection, a postponement takes place. But no such objection exits in the present instance

Taking the second interpretation, partition after the death of the father is at the pleasure of the successor. Thus, since sons have not a right of ownership prior to their father's demise, partition could not be then supposed, and it follows, even without a precept declaring it, that the time for partition must be subsequent to his decease. The limitation is therefore superfluous Sricrishna.

29. *It would thus bear an import not its own*] The words "may divide after the death of the father" would signify, differently from the obvious import of the terms, "may not divide while he lives," Sricrishna

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* So Sricrishna supplies the text. Maheswara says, "by you, who aver property dependent on birth."

30. Manu correctly interpreted, denies the right of sons during the life of parents, and affirms it after their demise.

30. Hence the texts of Manu and the rest [as Devala § 18] must be taken as showing, that sons have not a right of ownership in the wealth of the living parents, but in the estates of both when deceased. One position is conveyed by the terms of the text ; the other by its import.

31. Demise includes other causes of divestiture of property.

31. Mere demise is not exclusively meant : for that intends also the state of a person degraded, gone into retirement, or the like ; by reason of the analogy, as occasioning an extinction of property.

32. Narada enumerates several.

32. Accordingly Narada says · "When the mother is past child-bearing, and the sisters are married, or if the father be lost, or no longer an householder, or if his temporal affections be extinct

33 His text explained Various readings noticed

33. "Lost" signifies degraded : "no longer a householder," having quitted the order of a householder.* If the reading be "when he is exempt from death," then the sense is when being exempt from death (that is alive,) he is devoid of affections." The variation in the reading is unfounded

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30 *One position is conveyed by the terms &c*] One position, namely the want of right, during the parent's life, is expressed by the terms of the text it is conveyed by the words 'they have not power &c" The other, namely ownership after the parent's demise, is the import deducible from the right of partition Srikrishna &c.

31 *Gone into retirement or the like*] The order of a hermit, as well as the extinction of worldly affections, is here comprehended under the term, " or the like Srikrishna

32. *Accordingly* Narada *says*] For since partition is recited, being here understood from the preceding passage in which it was premised, (Narada 13 2) this indicates the departure of property from the father and the rise of property vested in sons Srikrishna

33 *Lost signifies degraded* &c] Raghunandana, in the *Dayatatwa*, copies the first part of this gloss ; and adds 'therefore, if the right of property be annulled by death or by degradation, or by quitting the order of a householder, sons are entitled to partition and so they are, even though the right of property remain, if the father be devoid of wish for wealth which appertains to him.'

The concluding part of Jimuta-Vahana's gloss is construed by Maheswara as censuring the reading which had been just mentioned. But most commentators understand it as an allusion to another not specified. Achyuta remarks, that three several variations of the text are exhibited in the *Prakasa* and other compilations According to the first (*nivritte*

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* The commentators notice another reading of this passage ; *grihas. thasramasarne*, 'not preserving the order of a householder ; instead of *grihast hasrama-rahite*, ' not being in the order of a householder.

34. Here also, to show, that the sons' property in their father's wealth arises from such causes as the extinction of his wordly affections, this one period of partition, known to be at their pleasure, is recited explanatorily · for the recital is conformable to the previous knowledge; and the right of ownership suggests that knowledge

34. By authorising partition, he declares property to be then vested.

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chapi ramanat,) the meaning is "if he be destitute of virile power." In the two last *nirapeeshe chasarane* and *niraste chapy asarane* both first terms have the same import with the concluding term The variation in the reading is groundless, says this author, being wanting in many books.

The reading preferred by Jimuta vahana, and in which he is followed by Raghunandana, is *vinashte tapy asarane* "lost and no householder." The variation, noticed by him in the text, is *nivritte tapi maranat,* "exempt from death" and the authority for it is Halayudha, according to a remark of Chandeswara in the *Vivada ratnacara*

Srichrishna observes, 'when such is the reading of the third verse of the stanza, then it is an epithet of 'one devoid of affections" The author uses the words, "when" and "then" to indicate his disapprobation. The reason is, that the epithet is superfluous' The author's allusion to a reading not specified is referred by this commentator to one of those exhibited in the *Pracasa* as before mentioned viz *nivritte tapi ramanat.*

But the author of a commentary bearing the name of Raghunandana, considers the author's censure as relative to a term in the text, *nishprihe* devoid of affection) a supposed reading for *vinashte* (lost) This however appears to be a mistake, as is remarked by Achyuta, for no such reading occurs.

In the same commentary it is further observed, that, in the *Vivada Chintamani*, the text is read *nivritte ramane chapi* (when the sexual passions have ceased) The remark is true. But that is only a transposition of the common reading (*nivritte chapi ramane.*) which occurs in the *Mitacshara* and many other compilations, and which is defended by the author of the *Viramitrodaya* against Jimuta-vahana's supposed rejection of it, or of the equivalent reading (*nivritte chapi ramanat*)

The author of the *Dayarahasya* follows the reading ascribed by Chandeswara to Halayudha, and noticed by Jimuta-vahana He says while the father is exempt from death, that is, alive, there are two periods of partition one, "when the mother is incapable of bearing issue," the other, "when the father is devoid of affections" He quotes Jimuta-vahana's reading of the text and interpretation of it; and proceeds thus If the father be no householder," that is, if he become an anchoret or ascetic, and "if he be devoid of affections," if he do not care for his wealth, if there be a relinquishment on his part through aversion from trouble, though he continue to be a householder, then, the father's voluntary relinquishment, his quitting the order of a householder, and his degradation from his class, are declared to be causes of annulling his property'

There are other variations in the reading of this important text, which it appears unnecessary to notice, as they do not concern JIMUTAVAHANA'S exposition of it.

34. *To show &c*] Literally 'From showing' (*jnyapanat*); that is, 'for the purpose of showing' (*jnyapanaya.*) SRIKRISHNA.

In the manner before explained, by means of declaring partition. Achyuta.

35. Partition may be demanded by any one of the coheirs

35. Since any one parcener is proprietor of his own wealth, partition at the choice even of a single person is thence deducible; and concurrence of heirs, suggested as one case of partition, is recited explanatorily in the text "the brethern being assembled &c" Else, since assemblage implies many, there could be no distribution between two; for no passage of law expressly propounds a division between coheirs.

36. Is not the first born sole heir? as hinted by Manu.

36. Is not the eldest son alone entitled to the estate, on the demise of the coheirs? and not the rest of the brethern? for MANU says: "The eldest brother may take the patrimony entire; and the rest may live under him, as under their father." And here eldest intends him who rescues his father from the hell called *Put** , and not the senior survivor. "By the eldest, as soon as born, a man becomes father of male issue, and is exonerated from debt to his ancestors; such a son, therefore, is entitled to take the heritage. That son alone, on whom he devolves his debt, and through whom he tastes immortality, was begotten from a sense of duty, others are considered as begotten from love of pleasure"

37. But he or any capable brother, may assume the management with the consent of the rest, as declared by Narada.

Menu authorizes separation of coheirs

37. Not so: for the right of the eldest [to take charge of the whole] is pronounced dependent on the will of the rest. Thus NARADA says: "Let the eldest brother, by consent, support the rest, like a father · or let a younger brother, who is capable, do so · the prosperity of the family depends on ability." By consent of all, even the youngest brother, being capable, may support the rest. Primogeniture is not a positive rule. For MANU declares: 'Either let them thus live together, or let them live apart for the sake of religious merit: since religious duties are multiplied apart separation is, therefore, lawful." By the terms "together or apart," and "for the sake," he shows it optional at their choice.

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The recital is comformable to the previous knowledge.] How is it a recital of what was known to be at their will, since will is not even mentioned? The author replies, "It is comformable to the previous knowledge" Without will, there is no partition, therefore, by declaring partition, will is suggested. The recital of partition conforms to that. Maheswara.

35. *At the choice of a single person*] At the choice of one out of many. Achyuta.

Since he has full power in right of ownership, partition by the choic of one is an inference of reasoning. Srikrishna.

36. *Who rescues his father from the hell* Put] This is an allusion to a passage of Manu and others, Vide infera. C. 11. Sect. 1. § 31.

* Vide Infra C. 5. § 6. & C. 11. Sect. I § 31.

38. Two periods of partition are admittad :

38. Thus there are two periods of partition : one, when the father's property ceases ; the other by his choice, while his right of property endures

39. Not three periods reckoning for one, the time when the ancestor's worldly inclanations cease, his wife being then incapable of bearing more issue.

39. But three periods must not be admitted ; one, when a father dies ; another, when he is devoid of worldly regards, and the mother's courses have ceased ; and a third by his own choice, while the mother continues to be capable of bearing children, and the father still retains temporal affections. For, if the cessation of the mothers' courses be joined as a condition, with the extinction of the father's worldly inclinations, it might be concluded, that partition could not take place among sons, however desirous of it, when the father becomes a hermit (his temporal propensities being extinguished ;) since the cessation of the mother's courses cannot yet have happened [while she is still between thirty and forty years of age :] for the nubile age, as ordained by Manu, is twelve years for a girl to be married to a man aged thirty, and eight years for one to be espoused by a man aged twenty-four ; and the age prescribed for entering into another order is fifty years.

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38 *Thus there are two periods of partition*] Although the annulment of the father's property by his own relinquishment, must necessarily be admitted, in the instance of partition by his choice ; since partition, mentioned by the author, could not else take place : nevertheless two periods are stated by discriminating the cession of property from the will to divide it. In fact, since it is an easier explanation, the period when the father's right ceased without special intention of investing another with the property, is the only reason of the son's succession to the heritage. There are not two periods of succession : for that would be a troublesome exposition. This mode of interpretation is consonant to Chudamani's opinion Sricrishna

The notion entertained by a certain writer, that the only period is when the father's property ceases, must be rejected as absurd. Achyuta.

But when the father, for the sake of obviating disputes among his sons, determines their respective allotments, continuing however the exercise of power over them, that is not partition : for his property still subsists since there has been no relinquishment of it on his part. Therefore, the use of the term partition, in such an instance, is lax and indeterminate. Srikrishna.

39 *But three periods must not be admitted.*] The author here opposes the doctrine maintained in the *Mitacshara* as is remarked by the commentators Achyuta, Srikrishna and Maheswara.

Srikrishna observes on the author's argument . 'Since a dams twelve years old, being married to a man aged thirty, will be only thir two years of age when he is fifty ; and a girl of eight, being espous by a man of twenty-four, will have attained only thirty-four years, wh her husbond reaches fifty , it must follow,' says the author, 'that par tion could not take place. But this reasoning is not accurate , for t postponement of partition is admissible, lest sons born after his retireme

40. Or without that condition.

40. If it be said, the extinction of passions, without any condition annexed to it, marks the period for a division of the father's estate: that is denied; for it might be thence inferred, that partition would not take place, although the father were a degraded person, if he were not at the same time devoid of temporal regard.

41. Four periods must else be admitted: *viz.* demise, degradation, disregards of worldly objects, choice.

41. But, if this be pronounced to be another period of partition, then four distinct periods would arise; 1, the demise of the father, 2 his degradation, 3. his disregard of secular objects, 4. his own choice.

42. The son's power of making a partition, in case of the father's incapacity, is an erroneous supposition: contrary to express passages of Harita, Sankha and Lichita.

42. The alleged power of sons to make a partition, when the father is incapable of business [by reason of extreme age &c.] has been asserted through ignorance of express passage of law [to the contrary.] Thus Harita says. "While the father lives, sons have no independent power in regard to the receipt, expenditure and bailment of wealth. But if he be decayed, remotely absent, or afflicted with disease, let the eldest son manage the affairs as he pleases*" So Sankha and Lichita explicitely declare "If the father be incapable, let the eldest manage the affairs of the family, or, with his consent, a younger brother conversant with business. Partition of the wealth does not take place, if the father be not desirous of it, when he is old, or his mental faculties are impaired, or his body is afflicted with a lasting disease. Let the eldest, like a father, protect the goods of the rest; for [the support of] the family is founded on wealth. They are not independent, while they have their father living, nor while the mother survives"

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if his passions be not extinguished, and his wife accompany him to the wilderness under the option allowed by the law, should be thus deprived of a maintenance. But if he retire to the wilderness at the latter period described by the legislator, there is nothing to prevent partition at that time, since the cessation of the mother's courses must have previously taken place.'

42. *Thus Harita says.*] The passages cited in the text, have been here translated, in conformity to the interpretations of Jimutavahana's commentators, they are differently explained by other compilers, and in some places read differently

* In the *Vivada-ratnakara* this is read *Camadane*, "if he be prodigal," (or bestow wealth, according to his mere pleasure and the *Prakasa* is cited for the other reading, *Camadine*, "as he pleases, (or with the father's consent,) if he be decayed (that is, poor).

43. These two passages, forbidding partition when the father is incapable of business, or when he labours under a lasting disorder, direct, that the eldest son should superintend the household, or a younger son who is conversant with business. The text last cited, therefore, runs "not if the father desire it not;" and it was by mistake that it was written "if he be incapable of business, partition of the wealth takes place &c.

43 Which forbid partition, in such case and provide for the care of the estate.

An erroneous reading noticed

44. Therefore, two periods only are rightly affirmed: one, when property ceases by the owner's degradation from his tribe, disregard of temporal matters, or actual demise; the other by the choice of the father, while his property still subsists.

44. Two periods are acknowledged 1st when the owner's property ceases; 2d, when he chooses to divide.

45. The condition "when the mother is past child-bearing," regards wealth inherited from the paternal grandfather. Since other children cannot be borne by her, when her courses have ceased, partition among sons may then take place. still, however, by the choice of the father But if the hereditary estate were divided, while she continued to be capable of bearing children, those born subse-

45 The restriction concerning the father's wife being incapable of child bearing regards the patrimony.

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43. *And it was by mistake, that it was written.*] It does not clearly appear where Jimutavahana found the reading which he here censures Chudamani, Achyuta, and Srikrishna understand the erroneous reading to have consisted in the substitution of one phrase for the other *(caryacshame pitari* instead of *na twacame pitari*) But Maheswara supposes the error to have consisted in the interpolation of the erroneous passage, including the words 'partition of the' wealth.' According to him the text means "not if the father desire not, when he is old &c." *(na twacame pitari)* and the words "partition of wealth if he be incapable of business" *(caryacchame pitari ritha-vibhagah)* are an interpolation which is here condemned Neither of these variations occur in the text, as cited by the authors of the *Calpataru Retnacara* and *Viramitrodaya*, who all agree with Jimuta-vahana in the reading of this passage But a different text is quoted from Sankha in the *Mitacshara*, *Smritichandrica*, *Chintamani*, ***Mayukha***, and *Viramitrodaya*,* and its import is the reverse of the one above cited. "Partition of wealth takes place, though the father be not desirous of it, if he be old, or his mind be perverted, or his body be afflicted with a lasting disease" The author of a commentary on the *Dayabhaga* to which Raghunandana's name is affixed, supposes that to be the reading to which Jimuta-vahana here alludes; censuring it as an erroneous quotation in the *Mitacshara.*

45, *When the mother is past child-bearing*] Mother here denotes generally any wife of the father Srikrishna,

* It is ascribed to Harita, instead of Sancha, by the compiler of the ***Vyavahara-Mayucha.***

quently, would be deprived of subsistence. Neither would that be right: for a text expresses, "They who are born, and they who are yet unbegotten, and they who are actually in the womb, all require the means of support: and the dissapation of their hereditary maintenance is censured."*

46 Passages of the law intimate one period of partition, when ceases; and another, by the choice of the owner.

46. It is because there are two periods of partition, in the case of the father's wealth, that Manu, Gautama and others, avoid the word "dead," and use the term "after" Since the father's right then ceases, the term "after" is employed to express that sense. Hence this is one period of partition. Another, regulated by his choice, while he does retain worldly affections, is indicated by the text "a son born after the division &c"

47. The restriction concerning the marriage of sisters inculcates the obligation of disposing of them in marriage. Like an injunction concerning debts of the father.

47. The condition "and when the sisters are married" does not intend a distinct period, but inculcates the necessity of disposing of them in marriage: as the text of Narada "What remains of the paternal inheritance over and above the father's obligations and after payment of his debts, may be divided by the brethern; so that their father continue not a debtor," is intended to inculcate the obligation of paying the father's debts, not to regulate the time of partition.

48. For the father's debts must be discharged, or be apportioned on the coheirs before partition of his

48. From that text of Narada, it results, that co-heirs, making a partition, may apportion the debts of their father or other predecessor, with the consent of the creditors, or must immediately discharge the debts. For such is the purpose of ordaining a partition of the residue after payment

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Since the condition is stated by way of illustration, it intends generally the impossibility of further male issue. If therefore it be possible, that the father should have issue by another wife, partition should not be made. Achyuta.

Even then, when the father's wife is incapable of bearing issue, partition is by the father's choice. Srikrishna

46. *This one period of partition*] The period when property ceases, is one of the periods of partition. The other, different from the cessation of property, is the moment of the father's choice Srikrishna.

It is the moment of his will to divide his property. Achyuta.

47. *Over and above the father's obligation.*] Or sums, of which payment had been promised by him. Achyuta.

* Vyasa The close of this passage is read otherwise in the *Mitacshara Smrutisara*, *Pracasa*, *Chintamani &c.* viz "No gift or sale should be made." Raghunandana in the *Dayatatwa*, Srikrishna, and Vidyavachaspati in the *Daya-rahasya*, copy Jimuta-vahana's reading of the passage.

of debts. Accordingly Yajnavalkya propounded the distribution of a mother's wealth, remaining over and above her debts. "Daughters share the residue of their mother's property, after payments of her debts: and the male issue, in default of daughters" This will be finally considered under the head of debt.*

wealth. 'And the mother's debts, before her goods are divided.
As Yajnyavalkya directs.

49. Or the restriction may signify, that the mother's effects should be shared by his sons, if their sisters have been given in marriage: but, if they be unmarried, the inheitance is held in common with them. This will be explained in due time.

49 The restriction concerning daughters may regard the succession to their mother's goods.

50. It is thus established [by reasoning, as well as by positive law,†] that two periods exist for the partition of wealth appertaining to a father [whether acquired by himself or inherited from ancestors.‡]

50. Conclusion. The periods for dividing the father's possessions are two.

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49. *The mother's effects*] Other than such as were received by her at her marriage for it will be shown, that the son's right of succession to such goods is subsequent to the daughter's son Srikrishna

50 *It is thus established &c*] When partition is made by the father, his choice only is requisite, if the estate were acquired by himself; but if it be an estate inherited from antestors, his will, joined with the circumstance of the mother being past child-bearing, is required. Srikrishna, *Dayacrama*

* The author refers to his treatise on debt, which is not extant; if indeed it were ever completed. † Srikrishna. ‡ Maheswara.

CHAPTER II.

Partition, made by a Father,—of Property ancestral,—and of his own acquisitions.

1\. Vrihaspati authorizes partition when parents are dead, or when no more issue may be expected.

In the next place, the period for the distribution of an estate left by a paternal grandfather or other ancestor, is propounded On that subject Vrihaspati says "On the demise of both parents, participation among brothers is allowed : and even while they are both living, it is right if the mother be past child-bearing."

2\. This relates to property ancestral.

For the restriction concerning the wife being past child bearing regards that.

2 This passage does not relate to the father's wealth ; for the text, concerning the exclusive right of a son born after partition, would be without relevancy . since there can be no son when the woman is past child-bearing. Nor can it be supposed to relate to the mother's goods: for she would thus be stripped of her wealth The condition, that she be past child-bearing, must then relate to the estate of the grandfather or other ancestor.

3\. It is no reason of partition, independently of the owner's choice.

3\. Neither can the circumstance of her being past child-bearing, be a cause of partition, independently of choice : for there can be no partition without a will to make it.

4\. Partition is by the father's choice; as intimated by Gautama.

4\. If it be asked, 'admitting a choice, whose must it be ?' The answer is, 'the father's ;' as deduced from the text of Gautama "after the [demise of the] father, let sons share his estate Or while he lives, if the mother be past child-bearing, and he desire partition "

5\. One period of partition is after the death of both parents.

It should not be made while the mother is living.

5\. Hence [since such is the import of Vrihaspati's text*] the decease of both parents is one period [for the partition of the grandfather's estate †] and since "parents" are here exhibited in the dual number, a division of the father's estate, among brothers of the whole blood, ought [in strictness‡] to be made only after the decease of the mother.

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1\. *If the mother be past child-bearing.*] The word mother intends a step-mother also for there is an equal possibility of her bearing other sons. From the mention of the mother's being past child-bearing, it appears, that the text relates to the grandfather's estate, not the father's . for the succession of a son born after partition is in this case provided for. Ragh. *Dayatattva*

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* Srikrishna †Srikrishna.

‡ Maheswara supplies this limitation of the text.

6. The mention of mother's demise, does not here imply partition of her goods since the phrase "even while they are both living" cannot relate to the mother's separate property. It must be understood as relating to the property of another person; for the legality of partition in the instance of survival is there propounded, (as appears from the word even), in the same case, in which the demise of both parents was declared a reason of distribution The death of the mother must not be expounded as relative to her goods. This subject will be fully considered in its place.

6. This does not relate to her separate property

7. Therefore the death of both parents is one period for partition of an estate inherited from a grandfather or other ancestor, and the other is by the choice of the father when the mother is past child-bearing.

7. One period as above. The other by the choice of the father provided the mother be past child-bearing.

8. A division of it does not take place without the father's choice: since Manu, Narada, Gautama, Baudhayana, Sankha and Likhita, and others, (in following passages, "they have not power over it," "they have not ownership while their father is alive free from defect," "while he lives, if the desire partition," "partition of heritage by consent of the father,"§ 'partition of the estate being authorized while the father is living" &c.) declare without restriction, that sons have not right to any part of the estate, while the father is living, and that partition awaits his choice: for these texts, declaratory of a want of power, and requiring the father's consent, must relate also to property ancestral; since the same authors have not separately propounded a distinct period for the division of an estate inherited from an ancestor.

8. But not without his consent: as appears from many passage of Menu, &c,

9. The text of Yajnyavalkya ("The ownership of father and son is the same in land which was acquired by his father, or in a corrody, or in chattels,") properly signifies, as rightly explained by the learned Udyota, that, 'when one of two brothers, whose father is living, and who have not

9 A text of Yajnyavalkya concerning the equal right of father and son, cited and explained.

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9 *The learned* Udyota.] It is not agreed, who is the author here cited by Jimuta-vahana. The commentator Chudamani says 'some author or compiler so named.' Maheswara retains the name exhibited in the text and call him Udyota But Srikrishna hints, that his appellation is Divacara. While Achyuta interprets the phrase as commendatory of an unnamed writer: and Raghunundana, or the commentator who has

received allotments, dies leaving a son; and the other survives; and the father afterwards deceases; the text, declaratory of similar ownership, is intended to obviate the conclusion, that the surviving son alone obtains his estate, because he is next of kin. As the father has ownership in the grandfather's estate: so have his sons, if he be dead. There is not in that case, any distintion founded on greater or less propinquity: for both equally confer a benefit by offering a funeral oblation of food, as enjoined at solemn obsequies.' Such is the author's meaning

A grandson, whose father is dead shares with his uncle the grand-father's estate.

10. And a great-grandson, when father and grand-father are dead, shares the great-grandfather's property.

10. Accordingly, a great-grandson, whose father [as well as grandfather *] is deceased, is in like manner an equal claimant with the son and grandson. For he likewise presents a funeral oblation.

11. If the text be otherwise explained, grandsons, whose father is living would participate with their father and uncle

11. But, if sons had ownership, during the life of their father, in their grandfather's estate, then, should a division be made between two brothers one of whom has male issue and the other has none, the children of that one would participate, since [according to your opinion †] they have equally ownership.

12. The former interpretation agrees with the context.

12 It should not be objected that such cannot be the meaning of the text, as not being the subject premised: for the case of grandsons by different fathers, was the proposed subject.

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assumed his designation, intimates, that the author himself has here delivered his own doctrine. Udyota is again mentioned in another place. Vide C. 11. Section 6. § 32.

The text of Yajnyavalkya is thus expounded in Raghunandana's treatise entitled *Dayatatwa* 'In regard to the land, a corrody, or slaves, though acquired by the grandfather: as the father has the property of them, in right of his being the person who presents a funeral oblation at solemn obsequies, so, if his property cease by death or other cause, through his sons have a right, through their uncle survive, to so much as should have been their father's share.'

12. *Was the proposed subject.*] It was the subject of the preceding passage in Yajnyavalkya's text.

* Maheswara. † Srikrishna.

13. A "corrody" (§9) signifies what is fixed by a promise in this form, "I will give that in every month of *Kartiki.*"

13. Corrody, mentioned in the preceding text explained

14. "Chattels."] From their association with land, slaves must be here meant.

14. Chattels intend slaves

15. Or the meaning of the text (§ 9) may be, as set forth by Dhareswara, a father, occupied in given allotments at his pleasure has equal ownership with his sons in the paternal grandfather's estate. He is not privileged to make an unequal distribution of it, at his choice, as he is in regard to his own acquired wealth.'

15. Or the text may be understood as forbidding the unequal division of property ancestrel.

16. So Vishnu says, "When a father separates his sons from himself, his will regulates the division of his own acquired wealth. But, in the estate inherited from the grandfather, the ownership of father and son is equal."

16. That agrees with a passage of Vishnu.

17. This is very clear. When the father separates his sons from himself, he may, by his own choice, give them greater or less allotments, if the wealth were acquired by himself: but not so, if it were property inherited from the grandfather: because they have an equal right to it. The father has not in such case an unlimited discretion.

17. The father may distribute his own acquisitions as he pleases, but not the patrimony.

18. Hence [since the text becomes pertinent by taking it in the sense above stated ;† or because there is ownership restricted by law in respect of shares, and not an unlimited discretion ;‡] both opinions, that the mention of like ownership provides for an equal division between father and son in the case of property ancestral, and that it establishes the son's right to require partition, ought to be rejected.

18. The doctrine of the *Mitakshara* &c concerning equal participation of father & son & the right of the latter to require partition, is rejected.

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13. *A corrody.*] The author explains corrody (*nibandha*) as signifying anything which as been promised, deliverable annually, or monthly or at any other fixed periods. Srikrishna.

Raghunandana, in the *Dayatatwa*, cites from the *Calpataru* this definition, "A fixed amount granted by the king or other authority, receiveable from a mine or similar fund.'

14. *Slaves must be meant.*] Immovables and bipeds are mentioned together in a subsequesnt text. From that association, it is inferred, that the term chattel here intends biped or slave. Chudamani.

For if the term intend substance in general, the mention of land and corrody, and the specific notice of chattels, would be superfluous. Achyuta.

15. *As in regard to his acquired wealth.*] He may not in this case, as in the distribution of his own property, (for there he had the option,) give unequal shares to his sons. *Dayatatwa.*

18. *Both opinions ought to be rejected.*] The opinions, here rejected are those of the author of the *Mitakshara* and others. Srikrishna and Achyuta.

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† Srikrishna and Achyuta. ‡ Maheswara.

19 Other texts similarly forbid an equal division.

19. Other texts should be explained in the very same manner.

20 The father takes a double share as usual: and the partition is by his choice.

20. It is consequently true. [since the text above cited do not imply co-ordinate ownership,*] that the father has his double share of wealth inherited from the grandfather or other ancestor; and that a distribution takes place at the will of the father only, and not by the choice of his sons.

21. A passage of Manu and Vishnu, exempting from partition the patrimony recovered by the father, unless by his free will, does not authorise the sons to demand partition of other patrimony against his will.

21. "If the father recover paternal wealth [seized by strangers, and†] not recovered [by other sharers,‡ nor by his father,§] he shall not, unless willing, share it with his sons: for in fact it was acquired by him" In this passage, Manu and Vishnu, declaring that he shall not, unless willing, share it, because it was acquired by himself, seem thereby to intimate a partition among sons even against the father's will, in the case of hereditary wealth not acquired [that is, recovered,] by him. But here also, the meaning is, that a father, setting about a partition, need not distribute the grandfather's wealth, which he retrieved: but must so distribute the rest of it, and not according to his own pleasure. Those authors do not thereby indicate partition at the choice of sons.

22. Moveables, though inherited, may be unequally divided at pleasure, like new acquisition.

22. The father has ownership in gems, pearls and other moveables, though inherited from the grandfather, and not recovered by him, just as in his own acquisitions; and has power to distribute them unequally, as Yajnyavalkya

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19. *Other texts.*] A text of Vrihaspati, concerning the equal power of father and son over property moveable or immovable, acquired by the grandfather, is here alluded to. Maheswara.

Such text must be interpreted as forbidding an equal distribution of the grandfather's property, among the grandsons, by their father. Srikrishna.

20. *Has his double share*] It is true, that he has two shares, since passages, which will be hereafter cited, authorize him to reserve a double allotment when partition is made in his life-time. Srikrishna, Chudamani and Achyuta.

At the will of the father] By the text of Gautama before cited (§ 4) partition depends on the father's choice. Srikrishna, &c.

21. *And not according to his own pleasure.*] Not according to his mere will: but as choice governed by dread of sin inclines. Thus it must be understood, that, if they be able to subsist by other means, there is no

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* Achyuta.

intimates. "The father is master of the gems, pearls and corals, and of all [other movable property] but neither the father nor the grandfather, is so of the whole immovable estate."* So Yajnyavalkya

23. Since the grandfather is here mentioned, the text must relate to his effects By again saying "all" after specifying "gems, pearls, &c." it is shown, that the father has authority to make a gift or any similar disposition of all effects, other than land &c. but not of immovables, a corrody and chattels [i. e slaves] Since here also it is said "the whole," this prohibition forbids the gift or other alienation of the whole, because [immovables and similar possessions are†] means of supporting the family. For the maintenance of the family is an indispensable obligation ; as Manu positively declares. "The support of persons who should be maintained is the approved means of attaining heaven. But hell is the man's portion if they suffer Therefore [let a master of a family] carefully maintain them "‡ 23. His text expounded. Manu inculcates the duty of maintaining the family.

24. The prohibition is not against a donation or other transfer of a small part and not incompatible with the support of the family. For the insertion of the word "whole" would be unmeaning [if the gift of even a small part were forbidden.†] 24. A small part of the immovables may be aliened, though the gift of the whole be forbidden.

25. From the express mention of immovables, a prohibition is inferred by the analogy exemplified in the loaf and staff, against the gift or other transfer of a corrody or slaves 25. The prohibition regards land, pensions and slaves.

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offence in his giving them no share of land or similar property recovered by him For it is the unequal distribution of patrimony not so retrieved that is prohibited. Srikrishna

23, *By again saying "all."*] The separate use of the term "all" must be meant to suggest gold and other movables. For it cannot be an epithet of gems &c. since it does not agree in number Srikrishna.

25. *The loaf and staff.*] This example of analogy, to which frequent allusion is made in argumentative writings, is variously stated. According to one explanation, the reasoning, exemplified by it, is analogy drawn from association. According to another, it is an argument a fortiori. A loaf having been left suspended on a staff, the loaf is missing and the staff is observed to have been knawed by rats : it is concluded, that the loaf has been devoured by them. A staff being thurst through loaves, these are necessarily brought by bringing the staff. Other explanations are given : but the result is similar Srikrishna, Maheswara &c. Also Ragh. *Dayatatwa.* Vide Infra. C. 3 § 15 in notis.

* Cited also as a passage of Yajnyawalkya by Srikrishna in the *Dayacrama*, and Raghunandana in the *Dayatatwa*. But the quotation in the *Mitacshara*, (whence it has been evidently taken) is anonymous. Srikrishna.

26. But, if necessary, the whole may be sold.

26. But, if the family cannot be supported without selling the whole immovable and other property, even the whole may be sold or otherwise disposed of ; as appears from the obvious sense of the passage ; and because it is directed, that a man should by all means preserve himself.

27. Texts of Vyasa cited. They do not disable the owner from aliening his property

27 It should not be alleged, that by the texts of Vyasa ("A single parcener may not without consent of the rest, make a sale or gift of the whole immovable estate, nor of what is common to the family" "Separated kinsmen, as those who are unseparated, are equal in respect of immovables : for one has not power over the whole, to give, mortgage or sell it,"*) one person has not power to make a sale or other transfer of such property For here also [in the very instance of land held in common,]† as in the case of other goods, there equally exists a property consisting in the power of disposal at pleasure

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A prohibition is inferred.] The prohibition extends to a cow, &c. and slaves, because they are exhibited in conjunction with land (Yajnavalkya. 2 122) Maheswara

Because the three are yoked together. Srikrishna

26. *As appears from the obvious sense &c.*] For the obvious sense of the passage inculcates the obligation of maintaining the family

In like manner, if there be no land or other permanent property, but only jewels or similar valuables, he is not authorized to expend the whole for the reason holds equally But the declaration of a power over movables supposes the existence of both sorts of property It should be so understood. Srikrishna.

27. *It should not be alleged &c.*] To refute Chandeswara's doctrine, that gift without the consent of coheirs, is invalid, and that such gift, though actually made, must be set aside, as the mere semblance of donation; the author states it by way of objection. Srikrishna and Acyhuta on *Dayabhaga.* Kasirama on *Dayatatwa*

The author here imagines an objection to the opinion which he himself entertains, that a gift or other alienation made by an unseparated brother, or coheir, is valid like a transfer made by a father. Ragh. on the *Dayabhaga.*

In fact, the requiring of the assent of coheirs in the case of separated brethren, is for the purpose of ascertaining the fact of partition and settling the limits like the consent of townsmen and neighbours. Therefore the transfer is valid without the concurrence of a separated coheir, as has been shown in the *Mitakshara.* Ragh. *Dayatatwa.*

On the question whether goods held in common may or may not be aliened by one of the parceners, some maintain, that joint property may not be given away by one parcener, because joint or common pro-

* Both stanzas are here ascribed by Jimutavahana (and similarly by Srikrishna) to Vyasa ; but the second is cited in the *Ratnakara* as a passage of Vrihaspati. † Srikrishna's Dayakrama,

28. But the texts of Vyasa (§ 27,) exhibiting a prohibition, are intended to show a moral offence: since the family is distressed by a sale, gift or other transfer, which argues a disposition in the person to make an ill use of his power as owner. They are not meant to invalidate the sale or other transfer.

28. They show a moral offence. But do not invalidate the transfer.

29. So likewise other texts (as this, "Though immovables or bipeds have been acquired by a man himself, a gift or sale of them *should* not *be made* by him, unless convening all the sons,") must be interpreted in the same manner. For here the words "should" "be made" must necessarily be understood.

29. Other passage must be similarly explained.

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perty is mentioned in a text of Manu * among things not fit to be given. It is accordingly declared by two passages of Vyasa that a single parcener has not power to make a gift or other alienation. The notion of these writers is, that a sale or other transfer made by the will of a single parcener, is valid, because all have property in the whole wealth; for they maintain a common right to the whole, vested in all. That is wrong for a common property vested in all is denied by the author of the *Dayabhaga*, because there is no proof of it. Srikrishna *Dayakrama*.

Separated kinsmen.] This is according to the reading in the *Mitakshara*, *Dayabhaga*, *Dayatatwa*, *Viramitrodaya*, *&c.* But in the *Smritichandrika*, *Parijata*, *Kalpataru*, *Ratnakara*, *Chintamani*, &c. the reading is *Dayadah*, "heirs" instead of *Sapindah*, "kinsmen." However, Chandeswara remarks, that "heir" here signifies son &c. And the term is so explained by the author of the *Prakasa*.

28 *Not to invalidate the sale.*] Since there is not a general property of the whole, a community of rights, consisting in there being numerous owners to the same things, does not exist and community signifies only the state of not being separated. But here it is the notion of the author of the *Dayabhaga*, who maintains a several right to a part vested in each person, that nothing prevents a donation or other transfer of the coparcener's own share, even before partition, since a common property is already vested in him. Srikrishna on *Dayakrama*.

29. *Must be understood.*] It should not be asked why may not the words understood be "is" "valid" or "is" "possible"? Were it so, the verb could not be governed by the same term with the participle ("convening.") Srikrishna on *Dayabhaga*.

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* The passage here cited is not found in Manu's institutes, and is quoted by most compilers from Vrihaspati. The author of the *Virada-Chandra* has silently introduced into it, a reading, which, if genuine, would make it confirm the contrary doctrine. For, as read by him, the passage in question enumerates void gifts.

30. The precept is infringed, but the transfer is not null.

30. Therefore, since it is denied, that a gift or sale should be made, the precept is infringed by making one. But the gift or transfer is not null: for a fact cannot be altered by a hundred texts.

31. This inference is corroborated by a passage of Naroda.

31. Accordingly [since there is not in such case a nullity of gift or alienation*] Narada says "when there are many persons sprung from one man, who have duties apart, and transactions apart, and are separate in business, and character, if they be not accordant in affairs, should they give or sell their own shares, they do all that as they please, for they are masters of their own wealth."†

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30. *A fact cannot be altered by a hundred texts.*] If a *Brahmana* be slain, the precept 'slay not a *Brahmana,*' does not annul the murder nor does it render the killing of a *Brahmana* impossible. What then? it declares the sin Ragh on *Dayabhaga*

31. *Narada says.*] The passage of Narada's institutes, here cited, is otherwise interpreted by different compilers: and is generally understood as declaring the separate and independent right of coheirs, who have made a partition It is so expounded in the *Smritichandrika, Ratnakara, Chintamani, Viramitrodaya* &c. But, in the present quotation, it is apparently understood as relating equally to divided and undivided shares.

The author of the *Viramitrodaya* giving a summary of this doctrine, say, 'Jimutavahana, having cited two passages of Vyasa (§ 27,) affirms, that they are not intended to incapacitate single coheir for making a sale or gift, since he has property defined to be a power of disposal at pleasure, in the case of immovables, precisely as in that of other effects, and since those texts cannot declare null an actual gift consisting in the relinquishment of the property, for the fact cannot be altered by a hundred texts. But the prohibition is levelled against wicked persons, and is intended to declare the alienation sinful, because it is injurious to the family, if there were no sufficient cause for the alienation, such as the distress of the family or the like. So the texts (§ 29) relative to separated coheirs must be explained as above Accordingly Narada authorizes generally a sale or any other alienation (§ 31) Since the text specifies the reason, "because they are masters of their own wealth,' 'it relates to immovables, for it would else be impertinent.'

Srikrishna and Achyuta on the *Dayabhaga* of Jimutavahana, and Kasirama on the *Dayatatwa* of Raghunandana, remark on Narada's text (13 43) 'This relates to gift of alienation by a well disposed man. But the prohibition was relative to an ill-disposed person. [Consequently there is no contradiction‡] It is here expressly declared, that the gift or alienation is valid without consent of heirs. And thus the prohibition of gift or sale of the whole estate, unless in distress, must be understood as especially regarding immovables (land &c) rather than chattles (gems

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* Srikrishna and Achyuta.

† Narada 13, 42—43 Several variations occur in the reading of this passage particularly in the third and fourth verses of the first stanza; as *Samyak*, well, for *Prthak*, apart, and *Krtyeshu* for *Karyeshu.*

‡ Achyuta.

32. We resume the subject Thus, for the reasons before stated, since the equal participation of father and son in the estate of the grandfather or other ancestor would be incongruous;* and since it cannot be intended by the text (§ 9) to confer on sons a right to demand partition; that text must either be meant to prevent an unequal distribution depending solely on the father's pleasure, [according to Dhareswara's interpretation; § 15, †] or it must intend the equal right of a nephew whose father is deceased, to share with his uncle, conformably with the other exposition [§ 9.‡]

32. Recapitulation. The text, (§ 9) has been rightly expounded.

33. Thus [since sons have not power to require partition ||] a division even of wealth inherited from the grandfather must be made by the sole choice of the father. But, with this diffence, that it is requisite, the mother should have ceased to be capable of bearing issue: whereas, in the instance of his own acquired property, partition takes effect without that condition. But, after the demise of the father, it takes place equally in the case of both sorts of property, [the father's estate or the grandfather's §] without distinction.

33. Partition is by the choice of the father. When the mother is past child, bearing; if the estate be hereditary. Or after the father's demise.

34. Therefore the periods of partition are two, even in the case of wealth inherited from ancestors.

34. The periods of partition are two.

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pearls, coral &c.) But, if this relate to a man's own acquisition, the preceding text (§ 22) would be impertinent. [For he had of course power over them, since they were acquired by himself.¶]'

32. *We resume the subject.*] That sons have not a right to participate equally with the father in the grandfather's estate, and that partition is not exigible at the will of grandsons, are positions which constituted the subject under consideration. Chudamani and Srikrishna.

Partition of the estate of a paternal grandfather or other ancestor, was the subject. Achyuta.

Since equal participation would be incongruous.] For a reason which will be subsequently stated. Srikrishna.

For it is provided by positive institute (§ 35) that the father shall have two shares of such property. Maheswara.

Since it cannot be intended &c.] For the reasons before-mentioned. Srikrishna.

34. *The periods are two*] The cessation of the father's property, by death or otherwise, and the father's own choice, provided the mother be incapable of bearing more children, are the two periods here meant.

* Maheswara reads 'since the ordaining of equal participation &c. would be insongruous: inserting the word *Vidhana*, which is omitted by Srikrishna in his reading of this passage.

† Maheswara ‡ Conformably with Udyota's exposition. Maheswara.

§ Srikrishna. || Chudamani. ¶ Kasirama on Dayatatwa.

35. The father takes a double share of the patrimony, as ordained by Vrihaspati and Narada.

35. In such case, if the father voluntarily make a partition with his sons, he may reserve for himself a double share of property ancestral. For Vrihaspati, saying "The father may himself take two shares at a partition made in his life-time;" and Narada*, "Let the father, making a partition, reserve two shares for himself;" do so ordain, without restriction

36 This is confirmed by analogy.

36. Besides, a double share of the grandfather's wealth is the father's due by this [following†] argument

37. For an elder brother takes two shares, as directed by Manu and Gautama.

37 Deductions of a twentieth part (with the best of all the chattels,) and of half a twentieth. and of a quarter thereof, are propounded by a passage of Manu: ("The portion deducted for the eldest is the twentieth part of the heritage, with the best of all the chattels, for the middlemost, half of that; for the youngest a quarter of it,*) and shares increased by one portion, by half of one, and by a quarter are propounded by other passages of the same author: ("if a deduction be thus made, let equal shares of the residue be allotted; but if there be no deduction, the shares

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But in fact, whether it be an hereditary estate, or his own acquired property, the time of the father's property ceasing is the only admissible period of partition. The distinction is, in the case of dividing the grandfather's estate that the circumstance of the mother's being incapable of bearing more children is associated with it. This should be understood, for even in the instance of a distribution made by the father, his property in the share receivable by his son is annulled by his own relinquishment. Else, if the father's property subsists, his goods could not become heritage, nor be subject to partition, since his sons have no previous vested right. Srikrishna.

35 *Without restriction*] According to the author's own doctrine the double allotment concerns hereditary property only, and is consequently propounded with discrimination of cases But, according to the opinion of his opponent, who admits the double share in the case of the father's own [acquired] property, the allotment of such share is here declared in regard to the grandfather's estate also, since there is no specified restriction of it to the father's wealth. Raghunandana on *Dayabhaga*.

36 *By this argument*] Having in the preceding paragraphs known that a double allotment for the father is ordained by express passages of law, the author proceeds to show, by the following reasoning, that, since a double share is allotted to the elder brother, two shares must *a fortiori* be given to the father who is entitled to greater revenue. Maheswara.

37. *Middlemost.*] Here the word middlemost intends the next after the eldest and those born after him are all comprehended under the term youngest Srikrishna.

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* Narada, 13, 12 Vide § 46 † Chudamane, Srikrishna &c

must be distributed in this manner, let the eldest have a double share, and the next born, a share and a half, and the youngest sons each a share thus is the law settled,) Gautama likewise, after directing, that "A twentieth part shall belong to the eldest, besides a pair [of goats or sheep,] a car, together with beats that have teeth in both jaws, and also a cow and bull," (*i. e.* a pair of goats, or the like, a car with horses or other beasts having teeth in both jaws, and a bull together with a cow; all this shall belong to the eldest;) and after directing, that "Cattle blind of one eye, or aged, dwarfish, or disfigured, shall belong to the middlemost, if there be more than one," (*i. e.* aged or old, dwarfish or stunted, disfigured or having a distorted tail, these shall appertain to the middlemost, provided the cattle be numerous;) and after further directing, that "A sheep, grain, iron, a house, and, together with a cart, one of each sort of quadruped, shall be given to the youngest; all the residue shall be equally divided;" (*i. e.* a sheep and other things, as specified, shall be allotted to the youngest; but let the brethren divide equally the whole of the residue;) has by the following passage allotted a double share to the eldest: "Or let the first born have two shares, and the rest take one a piece."

38. It must not be argued, that the eldest has a double share allotted to him as the acquirer of the wealth For the allotment of two shares is directed "if there be no deduction:" now a deduction could not be supposed in the case of an acquisiton; and, since the middlemost and youngest are not, inasmuch as they are acquirers of the property, distinguished from the eldest, the assigning of a share and a half, or other less portion, [as a share and a quarter,] to them, would be incongruous, and the use of the term "eldest" &c. would be impertinent.

38. Not as acquirer of the wealth.

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A pair of goats &c.] Or of sheep or other cattle. But kine are separately mentioned. Srikrishna.

Provided the cattle be numerous.] But if they be few, the distribution should be adjusted in proportion to the deduction receivable by the eldest. Srikrishna.

A house.] A habitation other than that which is the father's abode. For so Sankha ordains. Srikrishna.

39. But in right of primogeniture as limited by Manu, who denies that right to the appointed daughter.

39. Accordingly, in the case of a partition between an appointed daughter and a true legitimate son, Manu ordains, "A daughter having been appointed, if a son be afterwards born, the division of the heritage must in that case be equal, "since there is no right of primogeniture for the woman." * Thus propounding equal partition, because there is no right of primogeniture in this instance by reason of her sex, the author thereby intimates, that a male would have had a double share [in right his being eldest †]

40. The maxim, that more is not to be assumed than is necessary, does not authorize the assumption, that the precept relates to an acquirer.

40. In regard to what is said, that as in the instance of the *Holaka*, a passage of revelation to this effect, "The *Holaka* ought to be performed," is assumed for the justification of the practice of celebrating that festival which is in use among the *Prachyas*, (for it can be sufficiently justified by such a passage; and one, containing the word *Prachya* or other restrictive term, need not be supposed, since the proof of it would be burdensome,) so, in this case likewise, a passage of revelation in these words, "Let the acquirer take a double share," must be inferred, and not one containing the word "eldest" or other restrictive term. That argument is not right, for, in the one case, the practice observed by the *Prachyas* can be justified by a general precept of revelation, which must be presumed to that end. It should not be alleged, that one containing the term *Prachya* must be supposed for the sake of justifying the omission in non-performance, is no fit reason for presuming a lost revelation. But, here, since Manu and the rest use the word "eldest," a passage of scripture containing that term ought to be presumed to justify its insertion; not one exhibiting the word "acquirer;" since there is no necessity for assuming this: nor is there any special

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39. *Accordingly.* Since priority of birth dermines the right to a superior allotment. Achyuta.

Since the right to a double share is founded on primogeniture. Srikrishna.

40. *As in the instance of the* Holaka.] The author proceeds to refute the opinion of the same writer, who reconciles the matter on the principle of the reasoning taught under the head of *Holaka*. Maheswara.

It is the 8th topic in the 3rd chapter of the 1st book of Jaimini's *Mimansa*. Vide infra C. 6 Sect. 1.—§ 22.

The *Holaka* is the festival of spring (*Vasanta*), and is observed by the *Prachyas*. Srikrishna.

* Manu, 9. 184. Vide infra. C. 10. § 2. † Ragh on Dayatatwa,

authority for the proof of one containing both terms It should not be alleged, that since it is necessary to suppose a revelation for the purpose of authorizing the acquirer's double share in other cases, that may be the origin of the law in this case also, for it is an easy conclusion, and the word "eldest" may signify the acquirer. The reverse is equally possible; for, if a revelation containing the term "eldest" be supposed, even the word "acquirer" might just as well be presumed to signify eldest, since there is no ground of preference. Besides, on the same principle of facility, a supposed passage of scripture, containing tbree, four, or more terms, may be any how inferred from reasoning; and the terms of the whole law may be made to relate to it, by interpreting them according to analogy and metaphor: and thus may you demonstrate your skill in the law. Therefore, since an established practice, or a sentence of memorial law, from which a passage of scripture is to be inferred, may be sufficiently justified by assuming a passage in which the particular practice is described, or the words of the law are contained; more should not be presumed. And such is the import of the reasoning, instanced under the head of *Holaka*.

41. Vasishtha distinctly assigns two shares to the eldest brother and two to the acquirer.

41 Accordingly [since primogeniture and acquisition are severally, and independently of each other, reasons for the allotment of a double share,*] Vasisht'ha having ordeained a double share for the eldest brother, separately propounds the allotment of two shares to the acquirer Thus, after premising "Partition of heritage among brothers,"† he says "Let the eldest take two shares;"‡ and at no great distance adds. "He, amongst them, who has made an acquisition, may take a double portion of it"‖ Two shares being thus ordained by this author in right of acquisition, his direction for a double allotment, to be given to the eldest brother, would be impertinent

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It is called *Holaka* or *Holi*. The *Prachyas* are the orientals contrasted with the *Udichyas*, or people of the north, and *Dakshinatyas*, or people of the south. The celebration of the *Holi* is peculiar to the eastern *Hindus*, as the festival or worship of *Caranjaria* is peculiar to the southern *Hindus*. See Srikrishna, &c.

41. *Would be impertinent*] For two passage of one author cannot signify the same thing; since one of them would be superfluous.

* Srikrishna, and Achyuta. † Vasistha, 17 36. ‡ Vasishtha, 17. 37. ‖ Vasishtha, 17, 42.

42. Vrihaspati authorizes two shares in right of birth, knowledge and virtue.

42 The right of taking a double share, too, is not confined to the case of primogeniture. Thus Vrihaspati says. "The eldest by birth, by science, and by good qualities, shall obtain a double share of the heritage, and the rest shall share alike: but he is as a father to them" If the allotment of two shares were only in right of acquisition, the mention of birth, science, and good qualities, would be useless.

43. The allotment of two shares concerns partition among brothers of the whole blood only, or of the half blood only The deduction of a twentieth &c. regards the half blood, as is hinted by Vrihaspati

43 This double portion is applicable to the case of partition among whole brothers [or among half brothers only;*] and the deduction of a twentieth part for the eldest is relative to partition among brothers of both the whole and the half blood For Vrihaspati says: "All sons of regenerate men, born of women equal by class, should share alike after giving a deduction to the "eldest"†

44 For this being restricted to the half blood, the other relates to the whole blood.

44 Since partition among sons born of several wives, equal by class, is here stated as preceded by a deduction, it follows, that the doctrine of a double share relates to the case of whole brothers and this is proper, for the elder brother has the greater weight among his brethren, from the circumstance of his being of the whole blood.

45 The deduction is disallowed in the case of brothers equally meritorious.

45. The deduction also of one in ten cows &c must not be made. Manu declares: "Among brothers successful in the performance of their duties, there is no deduction of the best in ten, though some trifle, as a mark of greater veneration, should be given to the first-born."‡

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43. *All sons of regenerate men*] Kulluka Bhatta infers from this and the following passage of Manu's institutes, (9. 157.) that no deduction is allowed in favour of the first-born at a partition among the sons of a *Sudra* man. Jimuta-Vahana's commentators Chudamani and Srikrishna, oppose that doctrine, and assert the right of a *Sudra's* eldest son to the established deduction But Raghunandana, in the *Dayatatwa*, supports Kulluka Bhatta's opinion. The arguments are long.

45. *Successful in the performance of their duties*] It is here understood, that all have equal good qualities But, if endowed with superior qualities, the eldest has his regular deduction Chudamani.

The meaning is 'though successful.' But, if incapable, rather shall there be no deduction. Maheswara.

* Srikrishna and Achyuta

† Manu, 156. Though here cited from Vrihaspati; but it is quoted from Manu in the *Dayatatwa*, *Kalpataru*, *Ratnacara*, &c.

‡ Manu 9, 115.

46. By the reasoning thus set forth, if the elder brother have two shares of the father's estate, how should the highly venerable father, being the natural parent of the brothers, and competent to sell, give or abandon the property, and being the root of all connexion with the grandfather's estate, be not entitled, in like circumstances, to a double portion of his own father's wealth? Vrihaspati, extending to the eldest son the right to a double share because he is like a father, as expressed in a passage above cited (§ 42,) does thereby intimate a maxim, that the father shall have two shares: and the maxim is actually propounded by Vrihaspati; for he ordains such an allotment in general terms: "The father may himself take two shares at a partition made in his life-time."* So Narada says "Let the father, making a partition, reserve two shares for himself; and the mother shall take an equal share with her sons, if her husband be deceased."†

46. Thus the elder brother being entitled to two shares of the patrimony surely the father shall have two shares of it. That is hinted by Vrihaspati.

Narada's text (§ 35) again cited.

47. A father, distributing the goods, may take two shares for himself. The construction of the sentence is not, "A father, distributing his own goods, may take two shares" for that would contradict the doctrine before stated.

47. And explained.

48. Besides, if the father and son are to share equally the grandfather's wealth, [under texts declaratory of their similar or equal rights,‡] it must be affirmed, that as

48. There cannot be equal participation of fa

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46. *Extending to the eldest son.*] By ascribing to the first born equality with the father, it is implied, that in like manner as the father has a right to two shares when a partition of his own father's estate is made by him with his sons and grandsons so is the eldest son entitled to a double portion of his own father's wealth, when partition is made among brothers. Srikrishna.

47. *That would contradict it.*] It would be inconsistent with a passage of Vishnu above cited (§ 16) and with the text of Harita (§ 57). Srikrishna and Maheswara.

It would contradict the foregoing reasoning (§ 36 &c.) in regard to a double share of the grandfather's property. Achyuta.

It would be at variance with the argument, that, if an elder brother have two shares, when the grandfather's estate is divided, surely the father should have as much. Chudamani.

It would be incompatible with the right of reserving more or less [than a regular allotment] of his own acquired property. Ragh. on *Dayabhaga.*

The last explanation is wrong, for this doctrine has not been before stated. Achyuta.

48. *In common.*] A single article, becoming the subject of two rights of property predicated of two persons, is property in common. Srikrishna.

* Already cited, § 35. † Narada, 13. 12. Already quoted, § 35.
‡ Maheswara.

ther and sons in the patrimony. For either the goods must be in common, and consequently there could be no partition

much as is the father's share, so much [in number and quantity,*] is the son's : not, that the very same effects, and same in quantity, which are the father's, are also the son's : for thus the property would be in common, and it might be concluded, that like the goods of husband and wife, no partition thereof could take place

49. Or, if the son have an allotment of equal amount, the eldest brother and his sons taking two shares apiece, would leave but little to a younger brother.

49. Now, if the case were so, [that is, if sons were entitled to share with their father allotments of equal amount, while his property continued ;†] the eldest, together with his son, would have four shares, if two must be alloted to his son, at the same time that two are alloted to the eldest himself in right of primogeniture and one share only would belong to another brother Thus, if the eldest brother have many children, and equal portions must be assigned to them as to their father, a mere trifle would remain for a younger brother which would be in contradiction to great authorities

50 A passage of Vrihaspati concerning equal participation forbids an arbitrary distribution.

50. As for the text of Vrihaspati : "In wealth acquired by the grandfather, whether it consist of movables or immovables, the equal participation of father and of son is ordained :" its meaning is, that the participation shall be equal or uniform, and the father is not entitled to make a distribution of greater or less shares at his choice, as he may do in the instance of his own acquired goods. It does not imply, that the shares must be alike.

51. Or it relates to a son of two fathers (one natural and one adoptive.)

51. Or the text, declaratory of equal shares, may relate to a father who is himself son of two fathers ; [one the natural, and the other the adoptive parent]

52. The text of Yajnavalkya has been already expounded (§ 9.)

52. The passage, which declares that "the ownership of father and son is the same," has been already expounded (§ 9. &c.)

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51. *Or the text may relate,*] Chudamani understands the author to propose the second interpretation (which is founded on a text of Sankha as by him explained ,) because this passage of Vrihaspati propounds the father's want of independent power in regard to all property movable or immovable, and is consequently irreconcileable to other texts which allow his dominion over gems, a corrody or pension, and slaves But Srikrishna aad Achyuta restrict movables in this place to signify slaves , and thus reconcile those texts They expound "equal" as it were alike. As the father is a sharer, so is the son

52. *Already expounded*] In the two modes above stated (§ 9 and 15.) Aehyuta

Conformably to the opinion of Dhareswara and others (§ 5.) Mahes-

* Achyuta. † Maheswara.

53 Moreover, it is said, if that father be eldest, as rescuing his own father from the misery to which a childless person is doomed, it is assuredly reasonable, that he should have an allotment twice as great as his own sons, in the same case in which he would have double the allotment of his brothers, because he was as a father to them, for it is through him, that his sons are connected with the hereditary property But if he be not the eldest son of his father, he takes only an equal share with his son

53. It is said, that, being an eldest son the father has two shares in a partition with his son as with his brothers, but not unless he be eldest

54 That is not accurate For, since a share and a half or other specific allotment, is ordained for the middlemost and other sons, it is assuredly fit, that the father should have a double share, in right of paternity, and it is not proper on the part of yourself and the holy writers, to direct the equal participation of father and son in general terms.

54 That is wrong: he should have two shares in right of paternity.

55. Besides, the allotment of two shares to the father is not properly applicable to his own acquired wealth ; as appears from the circumstance, that the distribution of it follows his choice The precept regarding that allotment would be superfluous, since he may, at his choice, have either more or less than two or three shares Nor can the text be restrictive, for it would contradict Vishnu, who says: "When a father separates "his sons from himself, his own will regulates the distribution. But, in the estate inherited from the grandfather, the ownership of father and son is equal."*

55. The allotment of a double share cannot relate to acquired wealth, which the owner may divide as he pleases. It is so declared by Vishnu.

56. The meaning of this passage is, 'In the case of his own acquired property, whatever he may choose to reserve, whether half, or two shares, or three, all that is permitted to him by the law but not so, in the case of property ancestral'

56. Exposition of the text.

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53. *The misery to which a childless person is doomed.*] The hell called *Put* (Vide II. Sect 1.—§ 31) Achyuta

54. *It is fit he should have a double share*] Since it is not reasonable, that the same case in which the middlemost has a share and a half, and the rest have other appropriate portions, the father should in right of paternity have less, namely a single share. Srikrishna.

It is not proper to direct equal participation in general terms.] For the proper direction is, that the father of a son, who has only one parent, should have a double share ; but the father of a *Kshetraja*, or other offspring of two fathers, should have single share Srikrishna

* Vishnu, 17, 1—2. Vide Supra. § 16.

57. A passage of Harita cited.

57. Accordingly Harita says: "A father, during his life distributing his property, may retire to the forest, or enter into the order suitable to an aged man; or he may remain at home, having distributed small allotments and keeping a greater portion: should he become indigent, he may take back from them."

And explained

58. By this text the father is authorized to distribute a small part, and to reserve the greatest portion of his wealth. "The order suitable to an aged man," intends retirement.

59. A text of Sankha and Likhita expounded.

59. As for the text of Sankha and Likhita, "If he be son of one father (*ekaputra*), he may allot two shares to himself," the sense of it is this: 'The word *ekputra* means son of one man: it is not a compound epithet signifying one who has an only son, for that mode of construction prevails less than the other. "A son of one man" is a true legitimate son. The father, being such, is entitled to a double share: not so one who is (*kshetraja*) issue of the soil, though he be the father of the family.' But the text before cited (§ 9), declaratory of the equal ownership of father and son, must be explained as intending a father who was (*kshetraja*) issue of the soil or wife.

The father has two shares if he be son of one father *i.e.* legitimate

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57. *The order suitable to an aged man.*] If the period for becoming an anchoret be arrived, let him become an anchoret; if the period for the order suitable to old age or that of a resigned recluse is come, let him make his resignation: or if neither of these be the case, the author declares 'he may remain, having distributed allotment:' having given them to his sons or other descendants. But if that which he reserved be wasted by consumption or use, he may take back for his maintenance from his sons to whom he gave allotments. *Daya-rahasya.*

Should he become indigent.] Should the property reserved by him be expended. Achyuta.

Should he have consumed all his wealth. Srikrishna.

59. *If he be son of one father.*] This is Jimuta-vahana's interpretation. Chandeswara and the authors of the *Smriti-Chandrica* and *Vivada-Chandra*, follow the other exposition: "If he be father of one son:" and Vachaspati Misra with the author of the *Madanaratna* and others, adopting this exposition explains "one", as signifying excellent, and pre-eminent, or, in short, virtuous.

That mode of construction prevails less than the other.] According to a maxim of grammar, that mode of composition, in which the principal term is no member of the compound epithet must not be preferred to the more perspicuous composition in which the principal term is a member of the compound word. This maxim is here alluded to: and the author accordingly considers "son of one" to be a simpler explanation than "he who has one son."

60. For issue raised to a childless man, is the offspring of two fathers Baudhayana has so declared

60. The offspring of the soil is indeed son of two fathers Baudhayana declares him so: "The son who is begotten by another on the authorized wife of a man deceased, impotent, or distempered, is son of the soil He is considered as son of two fathers, as partaking of both families, and as heir to the wealth and obsequies of both."

61 Exposition of his text.

61 The meaning of this is, that the son begotten by another person on the wife of an impotent man or the like with the husband's consent, is termed (*kshetraja*) the son of the soil

62. Confirmed by a passage of Narada

62 So Narada says. "The produce of seed, which is sown in a field with permission of a proprietor, is considered as belonging to both the owner of the seed and the proprietor of the soil"*

63. The ambiguous term, in the text before cited (§ 59) must be construed absolutely.

63 Hence [since the compound epithet is a construction not to be preferred,†] and because the term (*ekputra*) ought to be made significant in the passage in question, as an epithet of the agent in the sentence, the notion, that it is vaguely used as an epithet of the object, is confuted.

64 Terms employed by the sacred writers, are not to be continually taken in a vague sense.

64. Besides, one, who continually explains in a vague sense, terms used by authors transcendently wise, as Manu, Gautama, Daksha and the rest, only demonstrates his own unsettledness.

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61 *The son begotten by another person*] A son begotten by another person on the wife of a deceased man, or begotten on the wife of an impotent man with his consent: Srikrishna

A son begotten or procreated by another on the wife of a deceased man, is one description of *Kshetraja*, or son of the soil another is a child begotten by a different person on the wife of a man not deceased, but impotent or the like, being authorized, that is, being sanctioned by the impotent husband Permission having been granted to another man to procreate a son, the child was sanctioned. The author explains the second description of son of the soil. But the first is not explained by him, being considered as sufficiently clear. Maheswara.

63. *And because.*] "And" must be here supplied In some copies, the reading actually is so Maheswara.

As an epithet.] Being an epithet of the agent, it is a condition of the action in question. Achyuta.

The notion that it is vaguely used, is confuted] "Let the father, being (*ékaputra*) parent of one son, allot two shares to himself." In this precept, the allotment of two shares is the act to be done, and the father is the subject of it. Consequently the circumstance of his being *ekaputra*

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* Narada, 12 57. † Maheswara. Vide § 59.

65. A father has two shares even of his son's acquisitions As ordained by Katyayana, who allots two shares or a moiety to the father.

65. Thus the father has a double share even of wealth acquired by his own son. For the expression is general: "let him reserve two shares;"† or "he may take two shares."‡ Katyayana declares it very explicitly. "A father takes either a double share, or a moiety, of his son's acquisition of wealth; and a mother also, if the father be deceased, is entitled to an equal portion with the son."

66. Exposition of this text.

66. The meaning of this passage is, that the father has a right to take either a double share or a moiety of his son's acquired wealth.

67. Another interpretation rejected.

67. It must not be explained thus: 'From the acquisition of both son and wealth, the father becomes entitled to two shares, but from non-acquisition of a son, the owner keeps the whole.' For it is admitted, that, when partition is made with brothers, one, who even has not got a son, takes two shares, as the gainer of the wealth: how then can he keeps the whole? It must therefore be affirmed, that, if any relative exist, who is entitled to participate, the acquirer has two shares; but, if there be none, he keeps the whole: and thus the specific mention of father and son becomes unmeaning, like the singing of a drunkard. Besides, acquisition is an act causing property; and it is a contradiction to say that it does not produce property, since it has been

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is an epithet of the subject, vaguely employed. Therefore, if there be many sons, the father still takes two shares. This notion entertained by others, is here confuted. Maheswara.

65. *The expression is general.*] Being applicable without restriction to any property but that which was acquired by himself. Maheswara.

Of his son's acquisition of wealth.] Of the wealth acquired by his son. Srikrishna, &c.

A mother also.] This relates to the father's wealth. Achyuta.

That wealth, of which the son takes a shaae, when his father is deceased, must be here intended. Therefore the son's acquired wealth is excluded. Maheswara.

67. *From the acquisition of both son and wealth.* The ambiguity arising from the use of the term acquisition, and that in the ablative case, instead of the relative, gives occasion to the author to go into a further disquisition on the meaning of the text.

For the contrary is shown under the head of gift of a whole estate.] For it there appears, that the prohibition against giving away a son is founded on reasoning, inasmuch as a son is not the property of his father. Srikrishna.

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* Narada, Vide § 35. and § 16. † Vrihaspati. Vide § 35.

expressly declared to do so [by the wise *] Neither is it true, that a son is the property of his father. For the contrary is shown under the head of gift of a whole estate. The term acquisition would be therefore metaphorical in regard to son, and literal in respect of wealth. But that is inadmissible in the instance of a single term once uttered.

68 It must not be argued, that the precept would be superfluous, since the son's right to a double share is demonstrable, because the wealth was acquired by him; and since the father's right to two shares is also deducible independently of this text; [and ‡] their equal participation may be thence inferred. The precept is significant: since without this text, there is no ground for concluding a father's right to two shares of his son's wealth. — 68 The precept as above explained, is not superfluous.

69 Besides, if the term "acquisition of wealth" be interpreted as relating to the father's goods, his right of taking two shares, or a moiety, at his choice, would be inapplicable, for his power of taking according to his pleasure, and the exercise of his will, are unrestricted. He may choose to take a share and a half, or one and a quarter, or three quarters of one share. How then are only two cases stated? That it cannot intend a restriction [to those two cases†] nor relate to the father's own goods, has been already shown [from two passages before cited §] and it is as fit that he should have a moiety of his son's acquired wealth as it is that he should have two shares of such wealth. — 69 It cannot relate to the father's own goods.

70 Nor does the text intend his taking a moiety of two sshares, or in other words a single share. For moiety and share being relative terms, imply a something of which they are parts: and, since they are equal in regard to the person and to the act of taking, they cannot relate to each other. As the interpretation, which takes *the relative term "double* share," in construction with "acquisition of wealth" in the ablative, is unexceptionable, it is also right to construe the word moiety with it, for the terms are contiguous. A moiety of the wealth, therefore, is meant, not a moiety of two shares, or in other words a single share: for it would be improper, while the obvious term, "a single share," might — 70 Nor can it intend a moiety of two shares, i. e. one share.

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In the instance of a single term once uttered.] For it is a maxim, that a term, uttered once, conveys a single meaning: and it would be inconsistent to give it two different senses at the same time. Srikrishna.

* Achyuta and Srikrishna.
† Achyuta. ‡ Srikrishna.
§ Srikrishna. See Vishnu, cited § 16 & 55 and Harita quoted § 57.

have been used, to employ a term, which does not express that sense. A moiety of the wealth, then, is the right interpretation

71. Either a moiety, or a double share is allotted, according as the patrimony has, or has not, been used in making the acquisition.

71. Here, the father has a moiety of the goods acquired by his son at the charge of his estate; the son, who made the acquisition, has two shares; and the rest, take one apiece But, if the father's estate have not been used, he has two shares; the acquirer, as many, and the rest are excluded from participation

72. Or a moiety is allowed, if the father possess good qualities But two shares in right merely of paternity

72 Or else, a father, endowed with knowledge and other excellencies, has a right to a moiety for an increased allotment is granted to the eldest by science and other good qualities But one destitute of such qualities has a double share in right merely of his paternity

73. Recapitulation. A father may take two shares of inherited property, and of wealth acquired by his son. He may reserve as much as he pleases of his own acquisitions

73 Therefore, the meaning of the texts is, that a father may reserve for himself two shares of wealth which has descended in succession [from ancestors,] or of that which has been acquired by his son He is not entitled to more, however desirous of it he may be But, of his own acquired wealth, he may reserve as much as he pleases.

74 He may give or withhold the eldest son's deduction from the patrimony and he may distribute his acquired property unequally

74 Among his sons, he may make the distribution,' either by giving [to the first born] or withholding [from him] the deduction of a twentieth part of the grandfather's estate. But, if he make an unequal distribution of his own acquired wealth, being desirous of giving more to one, as a taken of esteem, on account of his good qualities, or for his support on account of a numerous family, or through favour by reason of his piety, the father, so doing, acts lawfully.

75. For Yajnyavalkya Vrihaspati and Narada have pronounced that lawful.

75. Yajnyavalkya declares it: "A lawful distribution, made by the father, among sons separated with greater or less allotments, is pronounced [valid]"* So Vrihaspati: "Shares, which have been assigned by a father to his sons, whether equal, greater, or less, should be maintained by

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73 *The meaning of the texts*] Nareda's (§ 35.) &c. Maheswara.

74 *The father, so doing, acts lawfully.*] Thus an unequal distribu-

* Yajnyavalkya 2. 117.

them Else they ought to be chastised" Narada likewise: "For such as have been separated by their father with equal, greater, or less allotments of wealth, that is a lawful distribution: for the father is lord of all."*

76. Since the circumstance of the father being lord of all the wealth, is stated as a reason, and that cannot be in regard to the grandfather's estate, an unequal distribution, made by the father, is lawful only in the instance of his own acquired wealth Accordingly Vishnu says, "When a father separates his sons, from himself, his own will regulates the division of his own acquired wealth But in the estate inherited from the grandfather, the ownership of father and son is equal "†

76 It is so only in the instance of the father's acquired wealth as is ordained by Vishnu.

77. As a superior allotment, in the form of a deduction, is indicated by a passage of Yajnyavalkya, ("When the father makes a partition, let him separates his sons according to his pleasure, and either dismiss the eldest with the best share; or, if he choose, all may be equal shares "‡) how is any other unequal distribution here ordained? The answer is, such cannot be the meaning, for the text would be impertinent, since a superior allotment, resulting from the deduction of a twentieth part, is admissible when partition is made by brothers, after the demise of the father.

77. The unequal distribution, meant by Yajnyavalkya (§75) is not one made according to specific deductions, as limited by the same author.

78. Perhaps the text is propounded for the purpose of legalizing an equal distribution made by the father, without the authorized deductions? No: for then a less allotment only is declared lawful, as made by the father, and the word greater would be impertinent

78 Nor does it intend equal distribution without specific deductions

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tions among sons without any of the reasons for it, here specified is not lawful even in the case of his acquired property. Srikrishna

76. *That cannot be in regard to the grandfather's estate*] Although the father be in truth lord of all the wealth inherited from ancestors still the right here meant is not merely ownership but competency for disposing of the wealth at pleasure, and the father has not such full dominion over an estate ancestral Srikrishna

77. *The text would be impertinent*] As distinguishing partition made by a father from a division made by brothers, the text declaring valid a lawful unequal distribution would be impertinent Consequently that passage (Yajnyavalkya, 2. 117) does not intend greater or less allotments, as with or without deductions, but it relates to a distribution of unequal shares made according to the father's pleasure Srikrishna.

78. *For then a less allotment only is declared lawful.*] An equal share assigned by the father is less in comparison with a share to which a deduction is added as is practised among brothers Srikrishna.

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* Narada 13. 15. † Vishnu, 17. 1—2 Vide supra § 16 & § 55.
‡ Yajnyavalkya. 2 115.

79. Part of the passage cited would be impertinent under that limitation.

79. Besides, if the mention of greater or less shares here intend the regulated deductions, the second verse of the stanza ("let him separate his sons according to his pleasure,") becomes superfluous, for that, which was to be declared, is fully specified in the three other verses of that text. But, according to our interpretation, the phrase, "let him separate his sons according to his pleasure," relates to his own acquired wealth, while the allotment of the best share and an equal distribution,both regard an estate inherited from the grandfather There is consequently nothing superfluous

80, Vrihaspati propounds two modes of partition among coheirs, one by specific deduction, the other by equal shares, thus there would be no distinction between that and partition by the father.

80 Moreover, two modes of partition after the death of the father are actually declared by Vrihaspati in these words: "Partition of two sorts is ordained for co-heirs · one, in the order of seniority; the other, by allotment of equal shares." By saying "in the order of seniority," the author indicates specific deduction Equal participation is the other mode Now, since two sorts of mutual partition among brothers are thus expressly declared, there would be no distinction between that and distribution made by a father

81 Narada declares two modes of partition by the father

81. So Narada says "The father, being advanced in years, may himself separate his sons, either dismissing the eldest with the best share, or in any manner as his inclination may prompt"*

82, And here the best share for the eldest is distinguished from unequal partition at will.

82. The unequal distribution, here intended, appears evidently to be different from that which consists in giving the best share to the firstborn, since the author, having noticed the allotment of the best share to the eldest, again says "or as his inclination may prompt," thereby distinctly authorising any unequal distribution, which the father, for reasons before-mentioned, may think proper to make

83. Another passage of Narada restraining the father's power forbids an unauthorized distribution made without sufficient cause.

83. But the text of Narada, which expresses, that "A father, who is afflicted with disease, or influenced by wrath, or whose mind is engrossed by a beloved object, or who acts otherwise than the law permits, has no power in the distribution of the estate,"† relates to the case when the father, through perturbation of mind occasioned by disease or the like, or through irritation against any one of his sons, or through partiality for the child of a favourite wife, makes a distribution not conformable to law Nevertheless, unequal

partition is lawful, when grounded on [either of the four*] reasons above-mentioned †

84. A passage of Katyayana confirms this inference

84. Thus Katyayana says: "But let not a father distinguish one son at a partition made in his life-time, nor on any account exclude one from participation without sufficient cause."

85. Exposition of the text

85. Let him not distinguish one by the allotment of a greater portion, nor exclude one from participation by depriving him of his share, without sufficient cause. [This does not relate to specific deductions ‡] for the distinguishing of some by allotting to them the prescribed deductions [of a twentieth, and half or a quarter of a twentieth,||] extends to many [viz. eldest, middlemost and youngest ;¶] and is not confined to one. One son should not be distinguished without cause. But, for a sufficient reason, it may be done. Since the meaning is "even one son." The distinguishing of one, [as here forbidden,] has no reference to specific deduction, but intends a distribution made according to the father's mere pleasure, as before explained.

It does not relate to authorized specific deductions

86. When partition is made by desire of the sons, no unequal distribution should be made.

86. However, when sons request partition in the father's life-time, an unequal allotment should not be granted by him. Manu declares it. "Among undivided brethren if there be an exertion in common, the father shall on no account make an unequal distribution in such case."*

So Manu

87. The regular specific deductions should, however be allowed.

87. But the regular deduction ought in this instance to be allowed by the father. For it is not of the nature of an unequal distribution, and the allotment of greater or less shares is alone forbidden.

88. Conclusion.

88. Thus partition made by a father [has been explained.

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85. *Since the meaning is even one son.*] The particle must be here understood being inferred from reasoning. Achyuta and Srikrishna.

86. *Manu declares it.*] The passage of Manu here cited is understood otherwise by his commentator Kulluca Bhatta, and by numerous compilers. Srikrishna supports the interpretation which Jimuta Vahana had in view in this citation.

* Maheswara. † § 74. ‡ Srikrishna.
§ Srikrishna. || Maheswara.

CHAPTER III.

Partition by Brothers.

SECTION I

Partition improper in the Mother's life-time—Management of the affairs during the continuance of the family partnership—Any one coparcener may insist on separation—Right by representation admitted as far as the third degree

1 Partition among whole brothers, after the death of the father, is not right while the mother lives.

As hinted by Manu,

1. Partition among brothers, after the demise of the father, is next explained That partition is pronounced to be not lawful, among brothers of the whole blood, while the mother lives, although the ownership of wealth be vested in them by the death of their father. For the text ("after the father and the mother" &c.*) propounds a division of the paternal estate among brothers of the whole blood subsequent to the demise of both parents

2. The text which supposes her previous demise, does not relate to her particular property.

2. It does not intend a distribution of the mother's goods, after her demise For partition of the patrimony only is suggested by the term paternal, and there is no authority for interpreting it parental

3. The partition of that is separately noticed by the same author.

3 Besides, it would be a repetition · for the division of the maternal estate, on the death of the mother, is subsequently noticed by Manu in a separate text †

4. A passage of Yajnyavalkya confirms the inference.

4. Thus Yajnyavalkya says "Let sons divide equally the effects and the debts, after the death of both parents. "But daughters share the residue of their mother's property, after payment of her debts, and the [male] issue in default of daughters "‡

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1. *That partition is not lawful.*] The partition is valid, but is not morally right. Srikrishna.

Partition is not lawful while the mother survives If it be

* Manu 9, 104 Vide C 1, § 4. † Manu, 9. 192, Vide C. 4.
‡ Yajnyavalkya 9 118. Vide supra C 1, § 18.

5. Since the latter half of this passage shows, that sons have no right of participation in the mother's goods, if daughters exist, but, if none exists, then sons have the right of succession, being intended by the term "issue," the father's estate only can be meant, in the former half of the text, by the words "parents:" for otherwise there would be tautology.

5 For unless it be interpreted, there would be tautology.

6. The author, declaring that brothers may divide after the death of the father and mother, prop[illegible] a time subsequent to the demise of both as a fit period of partition, and the association [of their deaths] appears therefore to be designedly expressed.

6 The [illegible] designedly associated the deaths of father and mother as requisite to a lawful partition by brothers.

7. Accordingly Sankha and Likhita say, "Since the family is supported on the inheritance, sons are not independent: but as it were under the authority of a father, so long as the mother lives." They are not independent of their mother, they are not competent to make a partition.

7 Sankha and Likhit deny the independence of sons, while their mother lives.

8. Vyasa very explicitly declares it. "For brethren a common abode is ordained, so long as both parents live: but, after their decease, religious merits of separated brethren increase."

8. Vyasa clearly forbids separation of coheirs during the life of both parents.

9. Since the author forbids the separation of brethren by commanding them to live together, and prohibits partition with one whose father and mother are living, the association of their survival is not positively intended in the phrase "so long as both parents live". Therefore, if one parent be living partition is not lawful: but it is so, when both are dead.

9. Thus partition is unlawful while either of them lives but is lawful when both are dead.

10. Thus Vrihaspati says: "On the demise of both parents, partition among brothers is allowed: and, even

10. Vrihaspati confirms this.

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nevertheless made, a share is ordained for the mother. Ragh. *Dayatatwa*

By declaring it unlawful, it is intimated, that partition is not laudable, while the mother is living not that it is null. Kasirama on the *Dayatatwa*.

6 *The author declaring.*] In several copies of Jimuta Vahana, I find the name of Yajnyavalkya here interpolated. But is appears from the remarks of Srikrishna, who refers to the particle "and" as marking the association of the terms, that Manu before cited is the author intended.

9 *The association of their survival is not positively intended.*] If the association, suggested by the dual number in the phrase, "so

while they are both living, it is right if the mother be past child-bearing."*

11 His text relates to partition of the father's estate

11 Since partition while the mother is living cannot be relative to the mother's particular property, and since the authorized partition after the demise of both parents, which is indicated by the particle in the phrase "even while they are both living," is thus pronounced to be proper, partition among brothers after the death of parents is evidently relative to the father's wealth

12. Vyasa and Vrihaspati direct partition in the mother's life-time to be made with reference chiefly to her, in certain circumstances

12 Accordingly Vyasa propounds partition, in the mother's life-time, made with reference chiefly to her: "If there be many sons of one man, by different mothers, but equal in number, and alike by class, a distribution among (*a*) the mothers is approved" So Vrihaspati says "If there be many spring from one, alike in number, and in class, but born of rival mothers, partition must be made by them, according to law, by the allotment of shares to the mothers" (*b*)

13 Hence it is inferred, that sons have not power to divide while the mother lives, unless with her consent

13. Since there is no difference in the sons' shares for they are equally numerous and of the same tribe, partition is to be made by an allotment to the mother, not to the sons Therefore, as in the case of other wealth of the mother's so in this instance, [of the father's wealth, which is become their property,†] sons have not independent power to make a partition among themselves, while the mother lives; but, with her consent, the partition is lawful

14 Separation is pronounced by Gautama &c. to be laudable, supposing the mother's demise.

14. Hence, what is said by Gautama and others ("In partition there is increase of religious merit,‡) must be understood after the demise of the mother

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long as both live, were positive, dwelling together would not be requisite in consequence of the survival of one partition might therefore take place while the mother was living, and might be even claimed on her death while the father was yet living The author therefore declares it not to be positively intended Srikrishna.

13. *For they are equally numerous and of the same tribe.*] If they were of different tribes the shares would be unequal, viz four, three, two, and one, in the order of the classes If they were not equally numerous, inequality in their rights, as sons, might be apprehended. Chudamani

(*a*) "Among the mothers" is not correct It shall be "according to mothers." *Ed*

(*b*) "By the allotment, &c" is not correct. It should be "adjusting the shares according to the mothers. Ed.

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* Vide supra C 2 § 1. † Achyuta and Srikrishna.

‡ Gautama, 28, 4.

15. If then they desire to remain unseparated, the eldest brother, being capable of the care and management of the estate, may take the whole; and the rest should live under him, as under a father. Thus Manu says, "The eldest brother may take the patrimony entire, and the rest may live under him as under their father."* So Gautama "or the whole may go to the first born, and he may support the rest as a father."† From the particle, "or" it appears, that they may either become separate or continue to dwell together, and their dwelling together must be by consent of all. Thus Narada says, "Let the eldest brother, by consent, support the rest like a father, or let a younger brother, who is capable, do so. The continuance of the family depends on ability."‡ Even the youngest, being capable, may govern all the brethren. The middlemost of course may be here inferred by the analogy of the loaf and staff.

14. While the brethren choose to remain together the eldest should have the management, as ordained by Manu and Gautama.

Narada declares consent to be necessary.

And a younger brother, being most capable, may have the charge of the estate and family.

16. But partition takes place by the will of any one [of the coheirs], as before intimated.

16. And one coheir may require partition.

17. Accordingly [since partition by the choice of one coheir is lawful,||] Katyayana, treating of partition, says "Let them deposit, free from disbursement, in the hands of

17. As appears from the provision in Katyayana's text, for securing the

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15. *The analogy of the loaf and staff.*] To gnaw the staff was difficult for the rat, but, if that were accomplished, the eating of the loaf, which was attached to it, was easy. So in other cases, according to the circumstances of them, if one of associated things be true, the other may be rightly inferred. Ragh. *Dayatatwa.* Vide supra, C. 2. § 25.

16. ***As before intimated.***] For it was declared, in treating of partition, that any one person is complete owner of his own wealth. Chudamani, Srikrishna, &c.

17. ***Such as have not attained majority.***] Whose age does not exceed fifteen years. Srikrishna.

* Manu, 9. 105. † Gautama 28. 3. ‡ Narada, 13, 5. || Achyuta.

shares of minors and absentees, who of course have not consented

kinsmen and friends, the wealth of such as have not attained majority, as well as of those who are absent." So a text expresses, "The property of minors should be so preserved until they attain their full age"*

18. Partition extends to grandsons and great grandsons in the male line By reason of benefits conferred by them on the Manes of ancestor Devala hints this.

18 The rule of distribution among sons extends equally to them and to grandsons and great-grandsons in the male line. There is not here an order of succession, following the order of proximity according to birth. For those three persons, the son, grandson and great-grandson, do not differ, in regard to the presenting of two oblations at solemn obsequies, one, which it was incumbent on the ancestor to present, and the other which is to be tasted by his Manes Hence it is, that Devala says, 'A father, a grandfather, and a great-grandfather, assiduously cherish a newborn son, as birds the holy fig-tree,'† [reflecting] "he will present to us a funeral repast with honey, meat, and herbs, with milk, and with rice and milk, in the season of rains, and under the asterism *Magha.*" So Sankha, Likhita and Yama,‡ 'A father, a grandfather, and a great-grandfather, welcome a new born son, as birds the holy fig-tree,' [reflecting] "he will give us contentment with honey, and meat, and [especially the flesh of] rhinoceros, and with milk, and with rice and milk, in the season of rains, and under the asterism *Magha*" From the mention of the great-grandfather, it appears, that "son" here intends a descendant as low as great-grandson. Thus, since such a descendant confers

and so do Sankha, Likhita &c

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As well as those who are absent] It is here evident, that partition takes place without their consent. Srikrishna Chudamani, &c.

18 *In regard to the presenting of two oblations &c*] Where two persons are connected by a common oblation, the one partakes of the oblation presented at the other's obsequies (Vide infra C. 11. Sect. 1 § 38.) Maheswara.

Hence it is &c.] The author adds this as a further proof, that the daughter's son, though within those degrees, does not inherit jointly with son's sons. Chudamani and Achyuta.

* In the *Viramitrodaya*, wh[...] passage of Jimutavahana is quoted, this text is ascribed [...] It is not, however, found in Vishnu's institutes.

† *Pippala.* Ficus religiosa

‡ This is the reading of all the collated copies of Jimutavahana, but the transcript of this passage in the *Viramitrodaya* exhibits the name of Gautama.

benefits on his ancestors up to the great-grandfather, by presenting oblations to the Manes, the descendant within the degree of great-grandson has an equal right of inheritance.

19. Hence it is, that the son and grandson, whose own fathers are living, have no right of succession, for they do not present oblations to the Manes, since they are incompetent to the celebration of solemn obsequies

19. Not however those whose fathers are living, for they make no offerings to the manes.

20 After the death of parents, the special distribution, [which might have been] made by a father, cannot have effect among brethren But all the rest, as before explained, must be here again admitted

20 The arbitrary allotment, which a father may make is not permitted among brothers.

21. If there be one son living, and sons of another son [who is deceased,] then one share appertains to the surviving son, and the other share goes to the grandsons however numerous. For their interest in the wealth is founded on their relation by birth to their own father; and they have a right to just so much as he would have been entitled to

21. Grandsons, whose father is deceased, are entitled to just so much as would have been his share

22. The text, which expresses "Among the issue of different fathers, the allotment of shares is according to the father,"* does not relate to this case of [partition between uncle and nephew.†] For the whole estate belonged to his uncle's father, and therefore the whole would belong to him, and no part of it, to his nephews Or if partition is to be made as between father and son, under the

22 A passage cited concerning allotment of shares according to the fathers, does

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20. *The special distribution.*] The allotment of unequal portions on account of piety and so forth Chudamani and Achyuta.

All the rest.] Giving to the first born, or withholding from him, the deduction of a twentieth part (Vide 2. C. § 71) Chudamani and Achyuta.

21 *For their interest is founded on their relation by birth.*] The right of succession is not founded solely on the gift of a funeral oblation, but also on the relation by birth as son or grandson Else the daughter's son might be supposed to have an equal title Achyuta

22. *The text does not relate to this case*] Does it signify that the same share, which would have been the father's, is the son's? or does

* Yajnyavalkya 2. 121.

† Maheswara.

not relate to partition between uncle and nephew,

direction for the allotment of shares according to the fathers, the uncle would have two shares because a father has a right to a double portion; and the nephews would have a single share. But this is contrary to the approved usage of the wise.

23. But intends partition between cousins whose fathers died before their grandfather

23. The purport of the text, however, is this If there be a numerous issue of one brother and few sons of another, then the allotment of shares is according to the fathers

SECTION II

Partition with or without specific deductions—Provision for the Mother, and for the Sister.

24. Two modes of partition among brothers are authorised, one with, the other without specific deductions.

24 In the next place, [after defining the periods, when partition among brothers may take place,*] two modes of partition among brethren alike by class are propounded, namely, either with specific deductions of a twentieth and so forth, or else an equal division

25 Equal shares are ordained by Harita. Usanas.

25 Harita ordains an equal distribution without deductions, in the following passage, after speaking of a father, "If he be dead, the partition of inheritance should be made equally" So Usanas says, "This rule of partition is declared for brethren of various tribes, being born of women of classes below the father's; but the distribution among brothers born of women of the same tribe is ordained to be made equal." Thus Paithinasi says, "When the paternal inheritance is to be divided, the shares shall be equal." Yajnyavalkya also declares, "Let the sons divide equally the effects and the debts, after the death of both parents."†

Paithinasi

and Yajnyavalkya.

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it direct, that partition be made as between father and son' The author successively refutes both these interpretations. Srikrishna.

A variation in the reading of the text is noticed by Visweswara Bhatta in his commentary on the *Mitakshara*, which obviates all ambiguity. viz, "whose fathers are deceased' *(Pramitapitrikanam)* instead of "whose fathers are different' *Aneka-pitrikanam.)*

24 *Either with specific deductions*] Partition with regulated deductions has been already stated (Manu, 9. 112) Vide C 2. § 37. The author proceeds to adduce authority for an equal division. (§ 25.)

25. *Two modes of partition* § 24. *Two modes of distribution* § 25]

* Srikrishna

† Yajnyavalkya. 2. 118 Vide Supra. § 4.

Thus, there are two modes of distribution; namely, with or without specific deductions.

26. It must be argued, that the practice of equal partition is indispensable, as the only mode authorized by law. For the brethren may consent to the deductions by reason of great veneration [for the eldest.] An option exists like that of making or omitting partition.

26. But equal distribution is not indispensable. An option exists.

27. Accordingly, since persons of the present day [who are younger brothers*] entertain not great veneration [for their elders,] equal distribution is alone seen in the world; as also because elder brothers deserving of deducted allotments are now rare.

27. Though a division with specific deductions be now rare.

28. If one of the coheirs, through confidence in his own ability, decline his share of the wealth inherited from the father, grandfather, or other ancestor, something should be given to him, be it only a *prast'ha* of rice, on his separation, for the purpose of obviating any future cavil on the part of his son or other heir. Thus Manu says, "If any one of the brethren has a competence from his own occupation and desires not the property, he may be debarred from his share, giving him some trifle in lieu of a maintenance."† So Yajnyavalkya, "The separation of one who is able to support himself, and is not desirous of participation, may be completed by giving him some trifle."‡

28. A coheir may relinquish his share taking some trifle to obviate future cavil on the part of his representatives, As Manu and Yajnyavalkya have provided.

29. When partition is made by brothers of the whole blood, after the demise of the father, an equal share must be given to the mother. For the text expresses, "The mother should be made an equal sharer."§

29. The mother shares equally with her sons after the father's demise. A text cited.

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Constituting an optional alternative. Chudamani. A regulated not an optional alternative. Srikrishna.

27. *Like that of making or omitting partition.*] Entrusting the estate to the management of the eldest brother, the rest live under him as under a father; this is omission of partition. Separation is the making of partition. Maheswara.

28. *Any future cavil on the part of his son.*] Or recourse to litigation on the plea, that his father did not relinquish his share. Maheswara.

A different interpretation of the passages here cited, which is maintained by the author of the *Prakasa*, and which disagrees with the *Mitacshara* and other authorities, is confuted by Srikrishna and Achyuta.

* Srikrishna. † Manu 9. 207.

‡ Yajnyavalkya. 2. 117.

§ Vrihaspati. It is the sequel of the passage cited in Ch. 2. §. 35.

30. And expounded

30. Since the term mother intends the natural parent, it cannot also mean a step-mother For a word employed once cannot bear the literal and metaphorical senses at the same time

31. If no separate property had been given to the woman, she has a share. At a partition by the father all his wives partake
Yajnyavalkya is authority for this

31. The equal participation of the mother with the brethren takes effect, if no separate property had been given to the woman. But, if any have been given, she has half [a share *] And, if the father make an equal partition among his sons, all the wives [who have no issue†] must have equal shares with the sons. So Yajnayavalkya declares "If he make the allotments equal, his wives, to whom no separate property has been given by their husband or their father-in-law must be rendered partakers of like portions"‡ "To a woman, whose husband marries a second wife, let him give an equal sum, as a compensation for the supersession, provided no separate property have been bestowed on her but, if any have been assigned, let him allot half."§

32 But those wives only, who no male issue take share Vyasa
and Vishnu confirms this

32 Wives of the father [meaning step-mothers†] who have no male issue, not those who are mothers of sons, [must be rendered||] equal shares [with the son||] So Vyasa ordains " Even childless wives of the father are pronounced equal sharers, and so are all the paternal grandmothers they are declared equal to mothers" Vishnu likewise says, " Mothers receive allotments according to the shares of sons ; and so do unmarried daughters"¶

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31. *But if any have been given she has half*] Although his property relate to the case of a superseded wife yet it may be so assumed in the present case also conformably with the maxim, that the sense of the law as ascertained in one instance, is applicable in others also, provided there be no impediment Chudamani.

If the reasoning be equally applicable, an interpretation of law ascertained in one case is admitted in another. Therefore, a son must give, both to his mother and step-mothers, allotments equal to half his own share if separate property have been bestowed on them, because that is ascertained to be the law in the case of partition made by the father. Maheswara.

Provided no separate property have been bestowed on her.] This is the reading of the text as it is cited by the author of the *Tatwa.* In many copies of Jimutavahana the reading is "then" (*yasam*) for "her" (*yasyai*). It is an error of the transcribor; for the context requires the singular number Maheswara

Let him allot half.] The allotment of a moiety implies that the other moiety is completed by the woman's separate property. Else so much only should be given as will make her allotment equal to the son's Maheswara

32. *Childless wives of the father.*] A certain author supposes this to relate to partition made by sons, because the father's wives, whether

* Maheswara † Srikrishna ‡ Yajnyavalkya. 2 116.
§ Yajnyavalkya. 2. 149. || Ragh. on Dayabhaga. ¶ Vishnu. 18. 34—35.

33. According to the shares of sons.] As sons are entitled to four shares, three, two or one, in the order of the classes; as are the wives also.

33. The wife's portion, like a son's, is according to her tribe.

34. Unmarried daughters, likewise, following the allotments of sons, take a quarter thereof. Thus Vrihaspati says, "Mothers are equal sharer with them, and daughters are entitled to a fourth part."

34. So is the daughter's: and her share is a quarter of the son's as declared by Vrihashpati.

35. A son has three parts and a daughter one. So Katyayana, declares; "For the unmarried daughter a quarter is allowed; and three parts belong to the son. But the right of the owner [to exercise discretion] is admitted when the property is small."

35. She has one part and he has three as Katyayana ordains.

36. If the funds be small, sons must give a fourth part to daughters, deducting it out of their own respective shares. Thus Manu says, "To the maiden sisters let their brothers give portions out of their own allotments respectively: let each give a fourth part of his own distinct share: and they, who refuse to give it, shall be degraded."*

36. But, if funds be small the sons must contribute so much from their respective allotment.

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mothers of sons or childless, take one share a piece at a distribution made by the father. But that is erroneous for it is inconsistent with the remark, that the word mother does not signify step-mother (§) 30. Srikrishna and Achyuta.

Grandmothers.] When the father divides his own father's property with his sons, it is right that he should give to his own mother, on whom no separate property has been bestowed, a share equal to his own. But if there be any childless step mothers, he need not give them allotments out of the grandmother's estate, but food and raiment only; for they cannot be intended by the word grandmother, and the analogy of the step-mother holds good. Chudamani.

Some say, that the word grandmother here signifies the father's natural mother: for the reasons before explained. But others infer from the use of the plural number, and the mention of "all" that all the wives of the grandfather shall have shares. Srikrishna.

The first is chudamani's interpretation, which is refuted by Maheswara, who maintains the second opinion.

36. *If the funds be small.*] If the property be not sufficient to defray the nuptials of a daughter with a fourth part of the amount receivable by a son, the funds are said to be small. In such a case a partition is made exclusively among the brethren: and afterwards the daughter's nuptials are defrayed with contributions from their respective allotments. Srikrishna.

Out of their own allotments respectively.] This is according to the usual reading of the text. But Vachaspati Misra reads and interprets *swebhyah swebhyah* 'taken from their own brothers', instead of *swebhyo*

37. Daughters do not take portions in right of inheritance.

37 Let each give.] From the mention of giving, and the denunciation of the penalty of degradation, if they refuse, it appears, that portions are not taken by daughters as having a title to the succession. For one brother does not give a portion out of his own allotment to another brother who has a right of inheritance.

But because the brethren are bound to defray the charges of a sister's marriage and a brother's initiation: as declared by Yajnyawalkya.

38 Thus Yajnyavalkya saying, "Uninitiated brothers should be initiated by those for whom the ceremonies have been already performed; but sisters should be disposed of in marriage, giving them as an allotment, a fourth part of a brother's own share;"* declares the obligation of disposing of them in marriage, not their right of succession.†

39. If the wealth be great, a sufficiency for the nuptials and not a quarter part, is given.

39. Thus [since the daughter takes not a right by inheritance;‡] if the wealth be great, funds sufficient for the nuptials should be allotted. It is not an indispensable rule, that a fourth part shall be assigned.

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nsebhyah out of their own allotments. The author of a commentary on the *Daya-bhaga* to which Raghunandana's name is affixed, censures that variation of the reading.

37 *Not as having a title to the succession.*] The doctrine of the *Mitacshara*, that the daughter has a right of inheritance like the son, is thus refuted. Ragh. on *Daya-bhaga*.

38 *By those for whom the ceremonies have been performed.*] Maheswara quotes and refutes the author of the *Tatwa*, as maintaining, on the authority of this text, that the charges of a sister's marriage are to be defrayed by those brothers only who have been initiated. But no passage of such an import has been found in the *Dayatatwa*.

39 *It is not indispensable that a fourth be assigned.*] For a passage of Vishnu,|| cited by [Vachespati] Misra and the rest, provides, that "the son should defray the initiatory ceremonies [of other sons] and nuptials of unmarried sisters, suitably to the wealth." The *Retnakara* and the rest concur in this. Ragh. on *daya-bhaga*.

* Yajnyavalkya, 2. 125.

† Maheswara.

‡ Vishnu, 15. 31.

40 This [allotment of a fourth part if the funds be small*] must be understood as applicable only, where the number of sons and daughters is equal For, if the number be unequal, either the daughters would have a greater portion, or the son would be entirely deprived of property But that cannot be proper, since the son is principal [in relation to the inheritance]

40 Allotment of a quarter implies an equal number of sons and daughters

41. It is stated as an objection that, as the defraying of the nuptials of a sister is an indispensable obligation under the text of Narada, which expresses, "If no wealth of the father exist, the ceremonies must without fail be defrayed by brothers already initiated; contributing funds out of their own portions,"† the impoverishment of the brothers is no exceptionable consequence

41 An argument in support of the specific allotment grounded on a passage of Narada.

42 That is wrong For the text is intended to provide for initiatory ceremonies of brothers; and the reading of it, which expresses, that "the ceremonies of brethren must be defrayed by those who are already initiated," is unauthentic,‡ and the initiation of a brother was the subject treated of. It had been already said, "For those, whose forms of "initiation have not been regularly performed by the father, these ceremonies must be completed by the brethren out of the patrimony "§ Here the pronouns "those" and "whose" are in the masculine gender But this text immediately

42. Refutation of that argument.

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40. *If the number be unequal.*] If there be four sons or a greater number, and only one daughter, she has a larger portion If there be four daughters and one son he is deprived of wealth Srikrishna.

42. *The reading which expresses ceremonies of brethren is unauthentic*] Some writers, who so read the text, interpret brethren as signifying brothers and sisters (the feminine word being merged in the masculine term): and they infer that the ceremonies of both are intended. The author refutes that opinion. Chudamani.

That passage relates to the initiation of brothers] Is not then the defraying of a sister's nuptial enjoined? Thou art mistaken in that supposition The marriage of a sister is an indispensable obligation. What then? On the demise of the father the obligation of completing the initiation of brothers devolves on the brethren. But in regard to the marriage of a sister the authority devolves on the grandfather by

* Maheswara. † Narada 13 34

‡ The reading here censured occurs in the *Ratnakara Chintamani* &c. viz., *bhratrinam purva sanskritaih*, in place of *bhratribhih purva-sanskritaih*. The latter is the reading in the *Viramitrodaya Dayatatwa* &c.

§ Narada 13, 33.

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precedes the one before cited ("If no wealth of the father exist &c.") That passage therefore relates to the initiation of brothers

43\. Conclusion

43 Thus partition of the wealth of the father, grandfather or other ancestor [has been fully explained *]

CHAPTER IV

Succession to Woman's Property

SECTION I

Separate property of a Woman defined and explained

1\. The peculiar property of a woman is of various sorts as enumerated by Vishnu.

1 In the next place, for the purpose of teaching the distribution of a woman's separate goods, such property is first described On this subject Vishnu says, "What has been given to a woman by her father, her mother, her son, or her brother, what has been received by her before the nuptial fire, what has been presented to her on her husband's espousal of another wife, what has been given to her by kindred, as well as her perquisite, and a gift subsequent, are a woman's separate property "†

2\. One sort, termed gift subsequent is defined Katyayana.

2 Katyayana defines a gift subsequent "What has been received by a woman from the family of her husband at a time posterior to her marriage, is called a gift subsequent, and so is that which is similarly received from the family of

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the death of the father, and on the brethren if the grandfather be dead Thus, in a case where the disposal rests with the grandfather, the brethren, though not competent to dispose of their sister in marriage might be liable to an impoverishment. Ragh on *Daya-bhaga*.

In fact, after the demise of the father and grandfather the brother also is bound to defray his sister's nuptials, as having the authority to dispose of her in marriage. Therefore as the brother may be impoverished by defraying the initiatory ceremonies of numerous brothers, so it is no exceptionable consequence that he may be impoverished by defraying his sisters's nuptials. This should be considered by the wise. Srikrishna.

The ceremonies of brothers include marriage according to some authors. But [Vachaspati] Misra here explains them as terminating at the investiture with the sacrificial thread. Ragh on *Daya-bhaga*

2\. *At a time posterior to her marriage.*] It is thus evident that presents given by her father her mother her brother or her kindred. (§ 1.) intend what is given at any other time. Achyuta and Srikrishna.

From the family of her kindred] Several variations in the reading of the text have been remarked, the most material of which is at the

* Chudamani.

† Vishnu. 17. 18.

her kindred. Whatever is received by a woman after her nuptials, either from her husband or from her parents, through the affection of the giver, Bhrigu pronounces to be a gift subsequent."

3. By the word "kindred" her father and mother are denoted. Hence the meaning is this: any thing received subsequently to the marriage, from [maternal or paternal uncles or others*] persons who are related through the father or the mother, or from those two parents themselves, or so received from the husband, or from his family, namely her father-in-law and the rest; is a gift subsequent. But the term 'kindred,' in the text of Vishnu, intends maternal uncles and others, for the father and the rest are specified by the appropriate terms: and either the husband, or the parents, inherit that which was received at the time of the nuptials, according to the difference between marriages denominated *Brahma* &c. and those called *Asura* and so forth. 2. Interpretation of his text.

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close of it, here read, *Bandhu-kulat* 'similarly from the family of her kindred;' but in the *Mitakshara* &c., *Pitrik-ulat tat ha*, 'from her father's family;' and in the *Ratnacara* and other compilations, *Sva-kulat*, 'from her own family.' The text is cited again, Section 3, § 16.

3. *From his family namely her father-in-law, &c.*] It thus appears, that a present given to a woman by her son, which is noticed in Vishnu's text (§ 1) is not [technically] included among gifts subsequent, since the son cannot be here comprehended under the terms "kindred" and "family of her husband,' in the sense in which they are here used; for the son's relation is immediate. Srikrishna.

Either the husband or the parents inherit.] The meaning is this: the technical term 'gift subsequent' is useful relatively to the brother's succession to property, under that denomination, left by a childless woman. But the brother is not heir to what was received by her at the time of her nuptials, since the husband is successor in the instance of a marriage celebrated in one of the five forms called *Brahma* &c., and the parents are so in the other three marriages named *Asura* &c. or, on failure of them, the brother-in-law and so forth. Hence the term would be useless, if its signification were general. Or, if the contrary term were taken as comprehending it, a limitation must be argued in the text which specially declares the succession of the husband and the rest, because it would contradict the passage concerning the brother's right of succession. Thus, under the maxim "prevention is better than remedy," (literally better not touch mud than wash it off,") the use of a term which obviates that difficulty was proper. Srikrishna.

* Srikrishna.

4. Six sorts are specified by Manu and Katyayana

4. Manu and Katyayana describe the separate property of a woman. "What was given before the nuptial fire, what was presented in the bridal procession, what was been conferred on the woman through affection, and what has been received by her from her brother, her mother, or her father, are denominated the sixfold property of a woman."*

and by Narada.

So Narada says What was given before the nuptial fire, what was presented in the bridal procession, her husband's donation, and what has been given by her brother or by either of her parents, is termed the sixfold property of a woman."†

5. Katyayana defines gift before the nuptial fire; and gift presented in the bridal procession.

5. Katyayana explains this "What is given to women at the time of their marriage, near the nuptial fire, is celebrated by the wise as the women's peculiar property bestowed before the nuptial fire. That again, which a woman receives while she is conducted from the parental [abode, to her husband's dwelling,] is instanced as the separate property of a woman, under the name of gift presented in the bridal procession."

6. Exposition of the text.

6. Since the term "parental" is derived from a complex expression, of which one member only is retained, the presents, which she receives from the family of either her father or her mother, while she is conducted to the house of her husband, are gifts presented in the bridal procession.

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4. *Conferred on the woman through affection.*] This passage is read differently in most quotations of the text. "given in token of love," *dattan cha priti karmani* in place of *dattan cha pritital striyai.*

6. *One member only is retained.*] The term *paitrika* may signify paternal, as derived from *pitri*, father; or parental, as deduced from the complex expression *matri pitri* father and mother, retaining the single term *pitri*, according to a grammatical rule for rejecting the feminine word in such instances Panini 1. 2 70.

This is according to a reading of the text, which is countenanced by the *Ratnakara* and *Chintamani*, but the *Smriti-Chandrika* and *Mitakshara* read *pitur grihat* 'from the father's house,' instead of *paitricat* 'from the parental [abode]

From the family of either her father or her mother.] Is not the father's house properly signified by the word "parental?" For the mother's abode is the same with the father's. What use then is there in interpreting the term as signifying parental instead of paternal? The author shows the use of that interpretation It comprehends the case of her being carried from the house of her paternal grandfather, or from that of her maternal grandsire and so forth. Maheswara

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* Manu, 9 194

† Narada, 13. 8.

7. Her husband's donation" (*dava*) is wealth given (*datta*) to her by her husband, [not, as the word might be supposed to signify, the heritage of her husband *] For Manu and others [viz Katyayana and Vishnu] notice that which is given (*datta*) to her by him, without mentioning his donation *dava*,) and Narada specifies donation (*dava*,) without any separate notice of given (*datta*) — 7 The word *daya*, in the pasage above cited, signifies not heritage, but gift.

8. In other instances also, " husband's donation" is used for wealth given by the husband Thus Katyayana says, "Let the woman place her husband's donation as she pleases when he is deceased: but, while he lives, she should carefully preserve it, or else [if unable to do so*] commit it to the family." — 8 Other instances occur of that use of the term: as in a passage of Katyayana.

9. The meaning of the passage is this: wealth given to her by her husband, she may dispose of, as she pleases, when he is dead; but, while he is alive, she should carefully preserve it. This is intended as a caution against profusion. — 9. Exposition of the text.

10. So the text of Vyasa, concerning the limits of the value which may be given by her husband, [exhibits the — 10. Confirmed by a passage of Vyasa.

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7. *Her husband's donation*] Gift is the literal interpretation of the word *daya*. Inheritance or succession to the estate of a deceased person in right of relation to him, is a metaphorical sense of the same term. Ragh. on *Daya-bhaga*.

8. *Thus* Katyayana *says*] The passage of Katyayana, here cited, is explained by Chandeswara and Vachaspati Misra, conformably with the opinion of the author of the *Prakasa*, as intending property which has devolved on a widow by the death of her husband leaving no preferable heir; as well as property accruing to her, during his life-time, by his consent the first part of the passage being referred to the one, and the second to the other subject. The close of the passage is interpreted, as directing the widow to commit *herself* to the care of her husband's family, if there be no property left by him. Halayudha and Parijata are cited as authorities for the different interpretation adopted in the text.

Commit it to the family.] Entrust it to her husband's family, as her mother-in-law, sister-in-law, &c. Maheswara.

If she herself cannot preserve it, let her commit it to, or place it with, the family. Some authors interpret this, 'if she cannot subsist on that wealth, "let her commit herself to the family." that is, taking refuge with the family, let her pass the time with them' Srikrishna.

This is a wrong interpretation, for it is inconsistent with the premises. Achyuta.

10. *A present amounting to two thousand at most*] Copies of this as of other compilations differ in the reading of the first words: which

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* Achyuta, Srikrishna, &c. † Srikrishna.

* Achyuta, Srikrishna, &c.

in which the same term occurs and must be taken in the same sense

same term*] "A present, amounting to two thousand (*panas*) "at the most, may be given to a woman, out of the wealth and whatever property is given to her by her husband, let her use as she pleases"† As far as two thousand [*panas*] a present may be given to a woman, but not more. In answer to the question by whom given? the construction refers to the word husband contained in the text, and one not contained in it must not be assumed. Thus the term (*deya*) 'may be given' retains the literal sense of the verb (*da*) to give. But, since so much as is her deceased husband's estate, belongs to the widow, the sense becomes metaphorical [under another interpretation,] and that is not reasonable.

11 That passage does not limit a widow's participation of her husband's estate.

11. And whatever property is given to her by her husband, let her use as she pleases.] Hence [since the text relates to a gift made by her husband, and not to an allotment delivered to her by an umpire adjusting the succession,‡] the alleged conclusion, that the widow is competent to take so much of the property of her husband, who has died leaving no male issue, as amounts to two thousand [*panas*,] and not the whole estate, must be rejected by the wise.

12. This subject will be resumed in another place.

12. This and [the right of the widow to take the whole estate of her husband who leaves no issue||] will be discussed at full length [under the head of succession to the estate of one who has no male issue ¶]

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in some transcripts stand *Dwisahasrah-paro dayah*, in others, *Dwisahasrah paro dayah* or *Dwisahasrah-paro dayah*, but in the text of the *Mahabharata*, whence apparently the passage is taken, *Trisahasrah-paro dayah*, three thousand at most. The second is the reading which agrees best with the remarks of Chandeswara and Mitra Misra on the text.

So much as is her husband's estate] The whole estate of her husband who dies leaving no male issue. Maheswara.

11 *Hence the alleged conclusion must be rejected*] A different interpretation of the first part of Vyasa's text makes it relate to an annual allotment to a woman for her maintenance, which is restricted by that passage not to exceed the sum specified. The *Prakasa*, quoted by Chandeswara and the *Viramitrodaya* give this construction to the text, and do not consider it as relating to a widow who has of course a provision out of her husband's estate. The interpretation, which Jimutavahana refutes, is not found in any of the compilations now received as authority.

* Maheswara

† A passage, nearly resembling this quotation, occurs in the *Mahabharata Danadharma*, 16, 23

‡ Maheswara. || Srikrishna and Achyuta.

¶ Chudamani and Srikrishna, &c. Vide C. 11.

13. Yajnyavalkya explains [a woman's property: *] "What has been given to a woman [before or after her nuptials,†] by the father, the mother, the husband or a brother, or received by her at the nuptial fire, or presented to her on her husband's marriage to another wife, [as also any other separate acquisition,] is denominated a woman's property."‡

13 Yajnyavalkya describes the separate property of a woman

14. That wealth, which is given to gratify a first wife by a man desirous of marrying a second, is a gift on a second marriage: for its object is to obtain another wife [with the assent of the first.]

14. Explanation of his text

15. So Devala says: "Her substistance her ornaments, her perquisite, and her gains, are the separate property of a woman. She herself exclusively enjoys it, and her husband has no right to use it, unless in distress."||

15 A passage of Devala on a woman's peculiar property

16. Vyasa also: "Whatever is presented at the time of the nuptials to the bridegroom, intending [the benefit of the bride:] belongs entirely to the bride, and shall not be shared by kinsmen."

16. And one of Vyasa.

17. Intending.] Designing, that it shall appertain to the bride. It is not meant, that the property becomes her's, even without such intention. Accordingly the time of nuptials is here stated illustratively; and not as the sole motive. For the will of the giver is the cause of property. So the following authentic text does not specify, that it must be at the time of the nuptials: "What is presented to the husband of a daughter, goes to the woman, whether her husband live or die; and, after her death, descends to her offspring." Here the giver's intention is not specified; because it is implied by the word daughter.

17. Exposition of this passage.

What is at any time delivered to the husband for the benefit of the wife, belongs to her.

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15. *Substance.*] What remains of that which is given for her food and raiment.

Gains.] Interest on loans and so forth. Chudamani and Srikrishna, &c.

Perquisite.] This will be explained under the head of succession to a woman's separate property. Chudamani.

These terms are otherwise interpreted in the compilations of other schools, as the *Ratnakara, &c.* viz., *Gains.*] Wealth received from kindred. *Ratn.* Received from any person as an offering to gratify Gauri, or some other goddess. *Vramitr.*

Perquisite.] Wealth given to a maiden on account of soliciting her in marriage. *Ratnakara.*

* Srikrishna and Achyuta. † Srikrishna, &c.

‡ Yajnyavalkya, 2 144.

|| The first term of this text is read *Vriddhi* in the *Smritichandrika* and is interpreted: 'wealth given by the father or other person for increase of prosperity.' The *Madana-ratna* and other authorities read and interpret, as here, *Vritti*, 'wealth given by the father or others for subsistence.'

18. The number of six sorts (§4) is not restrictive whatever is at her sole disposed, is a woman's separate property.

18. Since various sorts of separate property of a woman have been thus propounded without any restriction of number, the number of six, [as specified by Manu and others.*] is not definitely meant But the texts of the sages merely intend an explanation of woman's separate property. That alone is her peculiar property, which she has power to give, sell, or use, independently of her husband's control.

19. Katyayana expresses this meaning.

19 Katyayana expresses this rather concisely: "The wealth, which is earned by mechanical acts, or which is received through affection from any other, [but the kindred,] is always subject to her husband's dominion. The rest is pronounced to be the woman's property"

20. Exposition of his text. The husband has power over wealth earned by his wife, or received in presents from any other but kindred.

20. Over that, which has been received by her "from any other" but the family of her father, mother, or husband, or has been earned by her in the practice of a mechanical art, [as spinning or weaving,†] her husband has dominion and full control. He has a right to take it, even though no distress exist. Hence, though the goods be her's, they do not constitute woman's property; because she has not independent power over them.

21. The wife has sole power over other descriptions of property. Katyayana defines gift of affectionate kindred.

21. But in other description of property excepting these two, the woman has the sole power of gift, sale or other alienation. So Katyayana declares "That which is received by a married woman or a maiden, in the house of her husband or of her father, from her husband or from her parents, is termed the gift of affectionate kindred. The independence of women, who have received such gifts, is recognised in regard to that property; for it was given by their kindred, to soothe them, and for their maintenance. The power of women over the gifts of their affectionate kindred is ever celebrated both in respect of donation and of sale according ot their pleasure, even in the case of immovables.

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21. *From her husband.*] This reading of the text is conformable to the quotation in the *Kalpataru* and other compilations But the *Mitakshara* reads "from her brother *bhratuh*, instead of "from her husband" *bhartuh*, and is followed by Chandeswara and many others. Another variation occurs in the first verse of this stanza, read by Chandeswara *Kanyaya sardham* with a maiden," instead of *Kanyaya vapi*, "or by a maiden.' It is censured as an erroneous reading by Vachaspati Misra

* Vide §4, Srikrishna.

† Maheswara.

22. What is obtained from kind relations, [meaning persons of her father's family or her mother's,*] is the gift of affectionate kindred.

22. Explanation of the text.

23. But in the case of immovables bestowed on her by her husband, a woman has no power of alienation by gift or the like. So Narada declares. "What has been given by an affectionate husband to his wife she may consume as she pleases, when he is dead, or may give it away, excepting immovable property." It follows from the specific mention of "given by a husband;" that any other immovable property, except such as has been given to her by him may be aliened by her, Else [if this text forbid donation in the case of immovables in general,†] the preceding passage concerning the power of women in respect of donation and of sale, "according to their pleasure, even in the case of immovables," would be contradicted.

23. Immovables given to her by her husband may not be aliened by her. A passage of Napada proves this. Other immovables may be aliened.

24. However, if the husband have no means of subsistence, without using his wife's separate property, in a famine or other distress, he may take it in such circumstances: but not in any other case. So Yajnyavalkya declares: "A husband is not liable to make good the property of his wife, taken by him in a famine, or for the performance of a duty, or during illness, or while under restrain."‡ Katyayana, again, denies the right of the husband to do so in any other circumstance: "Neither the husband, nor the son, nor

24. In distress, a husband may use his wife's property as declared by a passage of Yajnyavalkya. But in no other case. Katyayana directs a woman's property to be restored

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23. *From the specific mention of "given by a husband."*] The author of a commentary, to which is affixed the name of Raghunandana, remarks in this place, 'Hence it is true, that a woman is entitled to give away even immovable property received by the demise of her husband.' As the doctrine, which is here hinted, is opposed by the whole current of authorities and receives no countenance from Raghunandana himself, in his undouted work the *Dayatatwa*, this passage cannot be considered as of weight to shake the opposite doctrine, which denies the widow.s right of alienation unless under very peculiar circumstances. The authenticity of the commentary itself, as a work of Raghunandana, is more than doubtful. It is of no celebrity; and is suspected to be the work of some later writer, who has assumed Raghunandana's name and designation.

24. *She may exact her due supply*] She may take wealth (for the term *swa* signifies wealth) sufficient for food and raiment, &c. She shall obtain from her husband so much as may be ordered by the king. But, if her husband be dead, let her receive an allotment from his coheirs. Maheswara.

* *Dayatatwa.*

† Srikrishna.

‡ Yajnyavalkya.

with or without interest; according as it was taken by her consent or against it.

the father, nor the brothers, can assume the power over a woman's property to take it or to bestow it. If any one of these persons by force consume the woman's property, he shall be compelled to make it good with interest, and shall also incur a fine. If such person, having obtained her consent, use the property amicably, he shall be required to pay the principal, when he becomes rich. But, if the husband have a second wife and do not show honor to his first wife, he shall be compelled by force to restore her property, though amicably lent to him. If food, raiment and dwelling be withheld from woman, she may exact her due supply, and take a share [of the estate] with the coheirs."

25. If she be neglected by her husband, she may exact a provision from him.

25. If the husband, having taken the property of his wife, live with another wife and neglect her, he shall be compelled to restore the property taken by him. If he do not give her food, raiment, and the like, that also may be exacted from him by the woman.

26. Conclusion.

26. Thus a definition of woman's property has been propounded.

SECTION II

Succession of a woman's children to her separate property.

1. Manu propounds the succession to a woman's property.

1. In the next place partition of woman's property is explained. On that subject Manu says, "When the mother is dead, let all the uterine brothers and the uterine sisters equally divide the maternal estate."*

2. It is inherited by her sons and daughters conjointly.

2. Since this suggests the participation of brother and sister, connected in the sentence by reciprocation, although

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She may exact her own, that is, her due supply of food and raiment. She may take from the coheirs of her husband, that is, from her brother-in-law and the rest, a share, or the portion appertaining to her husband. Some interpret the text; 'She may exact from her husband's coheirs her own allotment, consisting of food, raiment, &c.' This is, however, an erroneous interpretation, for the same meaning is deducible from the single term *swa*, "her own." Srikrishna.

2. *By reciprocation.*] The grammatical terms here employed, and the author's reasoning, will be better understood after consulting a

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* Manu, 9. 192.

the conjunctive compound do not there occur, by means however of the conjunctive particle, which bears the same import [and is contained in the text], the meaning of the passage must be this, 'Let sisters and brothers of the whole blood share the estate.'

3. So Vrihaspati declares.

3. Vrihaspati likewise expresses assemblage by the conjunctive particle in the following passage :—" A woman's property goes to her children; and the daughter is a sharer with them, provided she be unaffianced; but, if married, she shall not receive the maternal wealth."

4. Sankha and Likhita ordain their equal participation.

4. Here the term children intends sons: and they share their mother's goods with unbetrothed daughters. So Sankha and Likhita say, " All uterine brothers are entitled to the wealth equally, and so are unmarried sisters."

5. The son inherits whether initiated or uninitiated.

5. Since the son is mentioned first in all these passages, he has a right to the succession to his mother's wealth, whatever be his state [initiated or uninitiated*]: and the conjunctive particle, which likewise occurs in every one of those texts, denotes assemblage.

6. The text of Devala is conclusive against the supposition, that unmarried daughters and sons inherit successively.

6. A passage of Devala is conclusive against one who persists in the controversy notwithstanding the foregoing reasons. It is as follows :—" A woman's property is common to her sons and unmarried daughters, when she is dead; but, if she leave no issue, her husband shall take it, her mother, her brother, or her father."

7. Else the special right of the maiden daughter in a particular case would no be declared.

7. Here it is expressly declared, that the mother's goods are common to the son and unmarried daughter: and if the maiden daughter were exclusively entitled to the whole of her mother's estate, [notwithstanding the existence of her brother,†] the special texts of Manu and others, [which will

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note subjoined to the *Mitakshara* on inheritance (2. 11), where the very doctrine is asserted which Jimuta Vahana controverts.

The conjunctive particle.] The particle *cha*, with which the conjunctive compound corresponds in import; according to Panini (2 2 9)

3. *She shall not receive the maternal wealth.*] The close of the stanza is read differently in other compilations, *labhate, mana-matrakam*, " She receives a mere token of respect," instead of *na labhen matrikan dhanam*, "She shall not receive the maternal wealth." This reading, which is peculiar to Jimuta Vahana, is disapproved by his commentator Achyuta who gives reasons for preferring the other: supported as it is by the authority of the *Ratnakara*, *Smriti-Chandrika*, *&c.*

6. *A passage of* Devala *is conclusive, &c.*] Literally. is a choker for an obstinate wrestler.

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* Srikrishna and Achyuta. † Srikrishna and Achyuta.

be cited,*] concerning the *(Yautuka)* wealth given at the nuptials, would be unmeaning; since she would have the right in all cases indiscriminately.

8. A different argument rejected. 8. But if one should propose this solution: 'the ordaining of equal participation is fit, if the brother and sister have alike a right of succession to their mother's property; but, if sisters only inherit equally, or, on failure of them, brothers only, the declared equality would be impertinent, since it might be deduced, without such declaration, from reasoning, because no exception to it has been specified:' he might be thus answered [by an obstinate antagonist:‡] It is no less impertinent to declare equality, on the assumption, that brother and sister inherit: since their parity may be in like manner deduced from reasoning.' [The antagonist might proceed to say†] Besides, how is it impertinent? since, in the case of brothers inheriting alone, [upon failure of sister,‡] the term "equal" is unquestionably pertinent, as it obviates the supposition, that deductions of a twentieth and the like shall be allowed in the instance of the mother's estate, as in that of the father's. Therefore, the half learned person [who argues, that the declaration of equality would be impertinent,||] must be disregarded by the wise, as unacquainted with the letter of the law, and with the reasoning [which has been here set forth ¶]

9. On failure of either, the other is heir. On failure of both, a daughter, with has or may have issue, inherits. 9. But for the cause above stated, the son and maiden daughter have a like right of succession. On failure of either of them, the goods belong to the other. On failure of both of them, the succession devolves, with equal rights, on the married daughter who has a son, and on her who may have male issue. For, by means of their sons, they may present oblations at solemn obsequies.

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8. *With the letter of the law.*] With the text above cited. (§ 6) Srikrishna.

9. *For the cause above stated.*] Because the word "equally" is not impertinent. Raghunandana on *Daya-bhaga.*

On failure of both of them.] Both the son and maiden daughter, Maheswara.

The succession devolves . . . on the married daughter.] And not, as in the instance of wealth given at nuptials, according to a subsequent definition of it, devolving in default of a maiden daughter, on one betrothed; or, for want of such, on a married daughter: since there is no authority for that order of succession in this case. Chudamani and Srikrishna.

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* Maheswara † Maheswara. ‡ Ibid. || Ibid. ¶ Srikrishna.

10. Hence, [since the right is founded on the presenting of oblations at solemn obsequies,*] the daughter's son is entitled to the property, on failure of the daughters above described: for the text of Manu expresses, "Even the son of a daughter delivers him in the next world, like the son of a son†." Neither a barren nor a widowed daughter inherits; for these present not oblations at solemn obsequies, either in person or by means of their offspring. Accordingly [since the daughter's right of succession is founded on benefits conferred through the means of her male issue,‡ or since neither the barren nor the widowed daughter's right of equal succession is recognized;‖] Narada says "On failure of the son, the daughter inherits; for she equally continues the lineage."¶ 10. The daughter's son inherits, in their default

11. But, if there be a son's son and daughter's son claiming the succession, the son's son has the exclusive title; for it is reasonable, since the married daughter is debarred from the inheritance by the son, that the son of the debarred daughter shall be excluded by the son of the person who bars her claim. 11. After the son's son.

12. On failure of all these above-mentioned, including the daughter's son [and the son's grandson,§] the barren and the widowed daughters both succeed to their mother's property; for they also are her offspring; and the right of others to inherit is declared to be on failure of issue. 12. Next the barren or widowed daughter succeeds.

13. But the text of Gautama, "A woman's separate property goes to her daughters unaffianced, and to those not actually married;"** that of Narada "Let daughters divide their mother's wealth; or, on failure of daughters, her male issue:"†† a passage of Katyayana. "But, on failure of daughters, the inheritance belongs to the son:" as also one of Yajnyavalkya, "Daughters share the residue 13. Passages, seemingly declaratory of the daughter's succession, to the exclusion of the son relate to wealth received by the mother at her nuptials.

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10. *The daughters above described.*] A daughter who has a son, and one who may have male issue. Maheswara.

Delivers him in the next world.] Since the parity of reasoning holds, the masculine gender is not here exclusive. Maheswara.

11. *Debarred from the inheritance by the son.*] The prior right of a daughter's son, in the case of wealth which was given at nuptials, is thus indicated, for, in that instance, the son is debarred from the inheritance by the married daughter. Srikrishna.

12. *Including the daughter's son.*] And the son of the son's son; for the right devolves on him, next after the daughter's son, since he confers great benefits on his ancester. Srikrishna.

* Srikrishna. † Manu, 9. 139. Vide infra C. 11. Sect. 6. § 31.
‡ Srikrishna. ‖ Achyuta. ¶ Narada, 13. 50.
§ Srikrishna. ** Gautama, 28. 22. †† Narada, 13. 2.

of their mother's property, after payment of her debts: and the male issue succeeds in their default,"* relate only to the (*yautuka*) wealth given at nuptials; for these passages contradict the text of Devala above cited (§ 6) Accordingly [since it is in the case of wealth given at nuptials, that the unmarried daughter has the print right of sucession;† or has the exclusive right,‡] Manu says, "Property given to the mother on her marriage (*yautuka*) is the share of her unmarried daughter.§"

Manu is explicit.

14. Derivation and meaning of the term *yautuka* or *yautaka*.

14. Here *yautuka* signifies property given at a marriage: the worn *yuta*, derived from the verb *yu* to mix, imports "mingling:" and mingling is the union of man and woman as one person, and that is accomplished by marriage. For a passage of scripture expresses "Her bones become identified with his bones, flesh with flesh, skin with skin"‖ Therefore what has been received at the time of the marriage, is denominated *Yautuka*.¶

15. Answering to *parinayya* in Vasishthas text.

15. Accordingly [since the term signifies the wealth received at the time of the marriage;**] Vasishtha says, "Let the females share the nuptial presents [*parinayya*] of their mother."†† For *parinayya* signifies wealth received at a marriage (*parinayana*.)

16. A passage of Manu explained.

16 As for a passage of Manu, "The wealth of a woman, which has been in any manner given to her by her father, let the *Brahmani* damsel take; or let it belong to her offspring;"‡‡ since the text specifies "given by her father," the meaning must be, that property, which was given to her by her father, even at any other time besides that of the nuptials, shall belong exclusively to her daughter: and the term *Brahmani* is merely illustrative [indicating, that a

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14 *Here yautuka signifies, &c*] This interpretation is opposed by the author to that which is proposed by the *Kalpataru*, where the term is explained as signifying 'Saving effected by her good management out of what has been given to the woman for the purpose of providing bread, potherbs, &c' Achyuta

This alleged interpretation is not found in the *Kalpataru* but the term is there explained 'Wealth given to a woman by her father and the rest, at the time of her nuptials'

15. *Wealth received at a marriage.*] And not, as the term is interpreted in the *Kalpataru* and other compilations, 'furniture, mirrors, combs, and the like' Srikrishna.

* Yajnyavalkya, 2. 118 † Srikrishna. ‡ Achyuta
§ Manu, 9. 131. ‖ *Veda.*
¶ This is written both *Yautuka, and Yautaka. Viramitrodaya.*
** Achyuta. †† Vasishtha, 17. 40. ‡‡ Manu, 9. 198.

daughter of the same tribe with the giver inherits,*.] Or, lest the term should be impertinent, the text may signify that the *Brahmani* damsel, being daughter of a contemporary wife, shall take the property of the *Kshatriya* and of other wives dying childless, which had been given to them by their fathers. The precept, which directs, that "the property of a childless woman shall go to her surviving husband;" does not here take effect. Such is the meaning of the passage, for else [according to the preceding interpretation†,] all the texts [which declare the equal right of the son and daughter, to inherit their mother's property in certain cases,‡] would be incongruous.

17. The daughter's son is not meant, where it is said, that issue male succeeds on failure of daughters.

17. It must not be argued, that the succession of the daughter's sons, on failure of the daughter, is shown by Narada and others [as Vajnyavalkya &c.||] because the word "issue" is connected in construction with daughter, which is the nearest term. For the word daughter, as signifying a distinct [viz. female¶] progeny, requires a parent for its correlative, and must not be connected in construction with "son" another progeny suggested by the term "issue:" since [both terms] alike [need a correlative indicating the parent.§]

18. Such an interpretation cannot be supported by the metaphorical sense of

18. Nor should [the word**] "issue" be expounded metaphorically, from the appropriate sense, (as signifying male, and "daughter" female; neglecting the relation to a parent indicated by these terms.††] For all the terms [viz. "daughter," repeatedly occurring in various texts;‡‡ or issue or other equivalent word; |||| or daughter, and issue, and, in the text of Katyayana, son;¶¶] may be taken in their literal acceptation by connecting them with "mother"; and the word "daughter" is acknowledged to bear the literal sense as connected with the term "mother."

19. Nor by construction.

19. Neither should the construction of the sentence be alleged to be 'issue of the daughter' suggested by the

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17. *For the word daughter as signifying progeny, requires a correlative.*] The single term daughter cannot, in the same phrase, successively signify the progeny and the parent, namely, progeny in respect of the mother, and parent in respect of the male issue. Srikrishna, &c.

* Maheswara.
† Srikrishna.
‡ Srikrishna.
|| Maheswara, Vide § 13.
¶ Srikrishna and Achyuta.
§ Ibid.
** Maheswara.
†† Srikrishna, Chudamani and Achyuta.
‡‡ Ragh. on *Daya-bhaga.*
|||| Chudamani.
¶¶ Srikrishna.

pronoun in the phrase "her issue." (§ 13.) For the pronoun would refer to her as daughter, [not as mother;] since the meaning of the original term is such.

20. The other interpretation is reasonable.

20. Besides the word "daughters," in the text of Yajnyavalkya (§ 13), having the termination of the first or nominative case, and the pronoun ("their") having that of the fifth or ablative, cannot be connected with the term "issue," by construction which requires the sixth or relative case. But this term governs the word "mother notwithstanding the intervention of mediate terms. Thus then, with the certainty, that "issue of the mother" is here intended, it is reasonable to interpret issue of the mother [as signifying son*] in the texts of Narada and Katyayana: for there can be no contradiction [since the passage must be presumed to be grounded on the same revelation.†]

1. It is right, that the son should inherit before the daughter's

21. Moreover, conformably with the text of Baudhayana "Male issue of the body being left the property must go to them,"‡ and because [the son, as immediate issue of the mother, is] nearer of kin [than the daughter's son, who is a mediate descendant ;||] it is reasonable, that the son born of her body should have the right of succession to his mother's property, and not the daughter's son, who is a mediate descendant not born of her person.

22. Nuptial presents go to the daughters.

22. Hence a woman's separate property, received by her at her nuptials, goes to her daughter; and not to her son [if there be a daughter¶] and the text of Gautama (§ 13.) is intended to explain the order of succession in this case [of an inheritance devolving on the female issue.§]

23. First unaffianced; next betrothed; lastly married daughters.

23. First, the woman's property goes to her unaffianced daughters. If there be none such, it devolves on those who

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21. *A mediate descendant, not born of her person.*] This is according to the common reading of the text, *na'nangaja-vyavahita-dauhitra;* as interpreted by Maheswara. But he notices variation of the reading, *na'ngaja-vyavahita-dauhitra,* which he expounds 'A mediate descendant 'through the daughter born of her person.'

22. *The text is intended to explain the order of succession.*] Not to exclude the affianced and married daughters. Achyuta.

23 *Pertinent as declaratory of the order of succession.*] Both Srikrishna and Achyuta notice a variation in the reading of Jimuta [illegible]'s text [illegible]s place, but they deduce the same import, though [illegible]ent ways.

* Maheswara.

† Srikrishna and Chudamani Maheswara.

‡ Vide infra. C. 11 Sect. 1, § 37.

¶ Srikrishna and Maheswara.

§ Srikrishna and Achyuta.

are betrothed. In their default, it passes to the married daughters [as indicated by the conjunctive particle in the text.*] For the right of the female issue generally is suggested by the term "daughters" [in Gautama's text § 13;] and the special mention of "unaffianced" and "unmarried," which follows, is pertinent as declaratory of the order of succession [and not as a limitation of the preceding general term †]

24. Thus Yajnyavalkya says, "The separate property of "a childless woman married in the form denominated *Brahma* or in any of the four [unblamed forms of marriage] goes to her husband: but if she leave progeny it will belong to her daughter and in other forms of marriage, [as the *Asura* &c] it goes to the father [and mother, on failure of issue,"‡] **24. A passage of Yajnyavalkya cited.**

25. Here, in certain forms of marriage termed *Brahma* &c, what has been received by a woman at the nuptial fire, goes after her death, first to her daughter [not, like property received at any other time but that of her nuptials, to her sons as well as her daughters‖]. Again, the right devolves first on the maiden daughter [conformably with the text above cited,¶] if there be none, it descends to the betrothed daughter; or for want of such, it goes to a married daughter [including even a barren or a widowed one:§] or, on failure of all daughters, it devolves on the son. For the husband's right of succession is relative to property of a wife who leaves no issue whatever. **25. And explained.**

26. The right of the married daughter, too, on failure of the unaffianced one and the rest, has been hinted by Vrihaspati using the term "unaffianced" (§ 3) **26. The married daughter's right is even hinted in a former text (§ 3.)**

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The order of succession is this first the property goes to the maiden daughter, then to one betrothed, for she is superior to the married daughter, because she belongs to the same original family *(gotra)* with her parents On failure of such, the property devolves on the married daughter; that is, on one who has a son, or who may be expected to have offspring If there be none such, it goes to any other daughter. Srikrishna and Achyuta

24. *Or in any of the four.*] Including that denominated *Brahma*,

* Achyuta. † Achyuta. ‡ Yajnyavalkya, 2, 146.
‖ Srikrishna. ¶ Achyuta and Srikrishna. § Chudamani.

27. The preceding passage (§ 24.) does not relate to woman's property in general; but to nuptial presents in particular, given at marriage celebrated in certain forms.

27. It should not be alleged, that this text of Yajnyavalkya* above cited § 24] does not relate exclusively to wealth received at nuptials , but is applicable to any property, whether obtained then or at any other time, and appertaining to a woman espoused by such forms of marriage For the preceding passage,† [which is declatory of a brother's right of succession,‡] would have no pertinency, [since, even in that case, the husband or the father would inherit under the text in question ||] and it would disagree with Manu : for he says, " It is admitted, that the property of a woman married by the ceremonies called *Brahma*, *Daiva*, *Arsha*, *Gandharba* and *Prajapatya*, shall go to her husband, if she died without issue. But her wealth, given to her on her marriage in the form called *Asura* or either of the other two (*Racshasa* and *Paisacha*,) is ordained, on her death without issue, to become the property of her brother and of her father."¶ Here, the subsequent terms, " wealth given to her," are understood in the preceding sentence Therefore, by thus connecting the terms, " wealth given to her at the nuptial ceremonies, &c," the text appears to relate to property received at her marriage, and not generally to any property whatever.

28. So Yama saying, " Wealth, which is given at the marriages called *Asura* &c. [is acknowledged to belong to the parents, if the woman die without issue,"§] appears to intend nuptial presents exclusively that is, wealth which is given while marriage ceremony lasts, having been commenced but not being finished

29. The texts do not relate to any property belonging to a woman married in such a form; but to property given to her at a marriage celebrated in such

29. It must not be argued, that the denominations of *Brahma* &c regard the woman [who is married by such ceremonies ,** and that the text concerns any property belonging to her ; the designations being relative to the person :‡‡] because there is no other rule provided for the descent of a childless woman's property received by her before her nuptials, or after them For the rule of succession, in the case of property received before or after marriage, will be fully stated, conformably with express laws.

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Any property appertaining to a woman The author is here opposing the doctrine of ... ked by Srikrishna.

* Srikrishna, Chudamani, &c. † Yajnyavalkya, 2, 145. Vide Sect. 3, § 10 ‡ Srikrishna, &c. || Srikrishna and Achyuta. ¶ Manu. 9. 196 & 197. § ... eswara. ** Mahesw ‡‡ Achyuta.

SECTION III.

Succession to the separate property of a childless Woman.

1. The heirs of the property of a woman who dies childless are next propounded. **1. Succession to a childless woman.**

2. "The separate property of a childless woman married in the form denominated *Brahma*, or in any of the four [unblamed forms of marriage,] goes to her husband."* **2. A passage of Yajnyavalkya again cited.**

3. The four forms of marriage, at the head of which is that called *Brahma*, are here intended. Those four are the *Daiva*, *Arsha*, *Prajapatya*, and *Gandharba*. With the *Brahma*, they make five. For Manu has specified five: namely "the ceremonies called *Brahma*, *Daiva*, *Arsha*, *Gandharba* and *Prajapatya*."† Wealth, which has been received by a woman while her marriage in any of those forms is celebrated, devolves on her husband, if she die without issue. Here issue signifies progeny. **3. And expounded.** **The nuptial presents are inherited by the husband in some cases.**

4. It is not right to interpret the text as signifying, that any property of whatever amount, which belongs to a woman married by any of those ceremonies formed *Brahma*, &c., whether received by her before or after her nuptials, devolves wholly on her husband by her demise. For the terms employed in the text (§ 2,) signifying 'at marriages in the form denominated *Brahma* &c' indicate time: and, if the words *Brahma* &c. [in Manu's text :‡] intended the woman [who is espoused in such form,§] those terms [as **4. A different interpretation refuted.**

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6. *Progeny.*] Intending the giver of a funeral oblation. Chudamani.

1. *For the terms employed in the text indicate time.*] To make the reasoning in this place more intelligible, it is necessary to remark that in the original of the passage under consideration, the word has a termination (that of the seventh or locative case,) which properly denotes the site or place of the act. Now a wedding cannot strictly be the site of the gift, and therefore, conformably with the syntax of the language, the author considers time to be indicated as a secondry or metaphorical meaning of the inflected word. He supports his interpretation by an argument which may be thus stated: the relation of the marriage to the time of its celebration renders this, metaphorically, the site of the donation; and that is an easier construction than making the moral relation, which results from the celebration of a marriage the site of the eventual succession.

* Yajnyavalkya 2. 146. Vide Sect. 2 § 124.

† Manu. 9. 169. Vide Sect. 2. § 27

‡ Vide Sect. 2 § 24.

|| Srikrishna.

expressive of the married person*] would have been exhibited in the singular number and sixth or relative case: for the pronoun, denoting the woman, is exhibited in that case and number, in the [subsequent] passage; "But her wealth, given to her on her marriage &c.† If the time of nuptials be indicated, the term has the metaphorical sense from relation to [time‡] present But, if the woman be intended, it has the metaphorical meaning from relation to the past ceremony of marriage Now this, being a less approved mode of construction, is not the proper one Neither is it true, that the terms *Brahma* &c do signify the woman who is espoused: for they are used by Manu and the rest as importing the marriage celebrated in such form Thus Manu having premised these words "now learn compendiously the eight forms of the nuptial ceremony."|| enumerates "the ceremony of *Brahma*, of the *Devas*, of the *Rishis* of the *Prajapatyas*, of the *Asuras*, &c"¶ So Narada says, Eight forms of marriage are ordained for the perfecting of the several tribes. the first of them is the *Brahma*,"§ Vishnu in like manner says, "Marriages are of eight sorts, the *Brahma*, the *Daiva*, &c."**

5. Viswarupa's exposition of the text confirmed.

5. Therefore, the observation of Viswarupa, that the text relates to woman's property received at the time of the nuptials, should be respected

6. In other cases, the mother inherits the nuptial presents; and, in her default, the father.

6. But a woman's property, received at a marriage in the form called *Asura* and the like, her mother may take on her demise, though her husband be living, and on failure of the mother, the father, For that order of succession results from the text, "Her wealth is ordained to become the property of her mother and of her father."†† If then joint succession were intended, the author would have said, "become the property of her two parents" And, as the father's right of inheritance is declared to be on failure of the mother in the case of a maiden's property, the same is fitting in this instance also

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6. *Her mother may take on her demise,*] It must be consequently understood, that the term father, in a passage of Yajnyavalkya, "In other forms of marriage it goes to the father."‡ signifies parents: one term only being retained of the phrase 'father and mother.' Srikrishna and Achyuta.

* Maheswara. † Vide Sect 2. § 27 ‡ Srikrishna.
|| Manu 3. 20. ¶ Manu 3. 81. § Narada, 12, 39
** Vishnu, 24. 18 †† Vide Sect. 2, § 27.

7. Accordingly Baudhayana says, "The wealth of a deceased damsel let the uterine brethren themselves take On failure of them, it shall belong to the mother; or, if she be dead, to the father"

7 A passage of Baudhayana on succession to a maiden's property.

8. The property of a maiden has been thus explained, [and the subject will not be resumed under a distinct head.*]

8 Is sufficient on the subject

9 It must not be argued that, in this case [of wealth received at nuptials,†] as in that of a maiden's property, the brother has the prior right For no text ordains it. and the succession of the mother and father only [not the brother‡] is expressly declared.

9. The brother does not inherit preferably the nuptial present, as he does a maiden's property

10. But wealth received by a woman after her marriage, from the family of her father, of her mother, or of her husband, goes to her brothers,[not to her husband,||] as Yajnyavalkya declares: "That which has been given to her by her kindred, as well as her fee or gratuity, and any thing bestowed after marriage, her kinsmen take, if she die without issue"¶

10 But he does inherit presents received by her after marriage; gifts of kindred, and her fee (*sulka*) according to Yajnyavalkya.

11. Given by her kindred] Presented to her by her father or mother [during her maidenhood§] Hence [since the words "given by kindred" intend given by the father and mother;**] their sons, who are her brothers, are the kinsmen here signified.

11. Explanation of the text.

12. That is confirmed by Vriddha Katyayana, who says immovable property, which has been given by parents to their daughter, goes always to her brother, if she die without issue." For it appears, that the brother's right of succession is founded simply on her leaving no issue [which is the case equally of a maiden and of a childless wife ††]

12. The interpretation is supported by a passage of Katyayana concerning immovables.

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10 *Received after her marriage from the family of her father, &c.*] Property intended by the term *Anvadheya* or 'gift subsequent' is here described by circumlocution Chudamani and Srikrishna

11 *Their sons, who are her brothers, are the [kinsmen here signified*] Conformably with the etymology of the term *bandhava* kinsmen, or offspring of (*bandhu*) kindred, explained as signifying her father and mother. Srikrishna and Achyuta

* Srikrishna and Achyuta

† Srikrishna and Achyuta ‡ *Ibid* || Srikrishna, &c.

¶ Yajnyavalkya 2. 145 § Chudamani and Srikrishna.

** Chudamani †† Srikrishna and Chudamani

13. In general, as affirmed by Viswarupa, the brother inherits a woman property.

13. The remark of Viswarupa, that property of a childless woman married by any form of nuptials, from that of *Brahma* to that of the *Pisachas*, (as hinted by the term "always,") goes to her brother, should therefore be respected.

14. Since he inherits the immovables, he must a fortiori succeed to movables.

14. Under the term "immovables," the same must be true of other property [such as described in the passage of Yajnyavalkya above cited ;*] by the argument a fortiori, exemplified in the loaf and staff.†

15. Presents given to the woman, when a maiden, are included in the preceding text (§ 10.)

15. By the phrase "given by her kindred" (§ 10) is signified that which was given to her by her parents during her maiden state. For any thing received by her, subsequently to her nuptials, is comprehended under the denomination of (*anwadhaya*) 'gift subsequent' and either the husband, or the parents, inherit that which was presented at the time of the wedding.

16. Katyayana's definition of a gift subsequent.

16. Katyayana describes a gift subsequent: "What has been received by a woman from the family of her husband, and at a time posterior to her marriage, is called a gift subsequent; and so is that which is similarly received from the family of her kindred."‡

17. Exposition of the text.

17. From the family of her husband.] From her father-in-law and the rest. From the family of her husband.] From that of her father and mother.

18. Another definition of gift subsequent.

18. The same author gives another definition: "Whatever is received by a woman after her nuptials, either from her husband, or from her parents, through the affection of the giver, Bhrigu pronounces to be a gift subsequent."

19. Explanation of fee or perquisite by the same authority.

19. He likewise explains the fee or perquisite (*Sulka.*): "Whatever has been received, as a price, of workmen on houses, furniture and carriages, milking vessels and ornaments, is denominated a fee."

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19. *Received of workmen.*] The passage is translated conformably to the interpretation of Jimuta-vahana and his commentators, Srikrishna Achyuta and Maheswara, and it seems to have been understood in the same sense by the authors of the *Ratnakara* and *Virada-chandra*. But it is difficult to reconcile this meaning with the construction of the sentence. The passage in accordingly explained in quite a different sense by the authors of the *Smriti-chandrika*, *Madanaratna*, *&c.* 'The price of house, furniture, carriages, &c. received in trust for the bride, is her fee or perquisite.' There is a variation in the reading of the text adapted to these different interpretations: Jimuta-vahana reading *karminam* 'workmen,' and the *Smriti-chandrika &c. karmanam*, 'works.'

* Chudamani. † Ch. 2. § 25. ‡ Cited before; Section 1 § 2.

20. What is given to a woman by artists constructing a house or executing other work, as a bribe to send her husband or other person [of her family] to labour on such particular work, is her fee. It is the price [or labour ;] since its purpose is to engage [a labourer.]

20 Interpretation of the passage.

21. Or a fee is that which is described by Vyasa. "What [is given] to bring the bride to her husband's house, is denominated her fee" That is, what is given by way of bribe or the like to induce her to go to the house of her husband

21 A different explanation by Vyasa.

22. This fee, [as described in both the passages above cited,*] occurs indiscriminately in any form of marriage, whether that termed *Brahma* or mother, Such, or any similar property of a childless woman, her brother inherit

22. Either way, property of such description occurs under every form of marriage.

23 But it does not intend a gratuity (*Sulka*) presented to damsels at marriages called *Asura* and the rest. For that gratuity is restricted to the particular form denominated *Asura* [and does not occur in the rest †] Accordingly it is said "The *Asura* marriage is grounded on the receipt of wealth ; the *Gandharba*, on reciprocal connection ; the *Rakshasa*, on seizure in war , and the *Paisacha* is where the bride is obtained by fraud."‡

23. The term (*Sulka*) is not employed in its sense of price, as intending a gratuity for the purchase of a bride · such as is given at an *Asura* marriage.

24 Hence, since there is no gratuity at the *Rakshasa* marriage, nor at the other [viz the *Paisacha* marriage,‖] the conclusion, deduced from association with nuptial gratuity, that only such property goes to the brother as was received under the *Asura* and other similar marriages, must be rejected : as also because that is not the separate property

24. A proposed restriction of the text (§ 10) to the case of *Asura*, &c. similar marriages refuted.

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20 *It is the price of labour*] *Sulka* properly signifies price : though it has become necessary to translate it fee, perquisite, or gratuity.

21 *What is given to bring the bride.*] Chudamani notices a variation in the reading of Vyasa's text , *anitam* for *anetum*, "what is brought [while the bride is going] to her husband's house ," instead of "what [is given] to bring her to her husband's house "

22. *Occurs indiscriminately in any marriage.*] The term fee does not here denote the gratuity (*Sulka*) received at an *Asura* marriage. (Vide § 23) Srikrishna.

23 *It does not intend a gratuity at marriages called Asura*] The author here refutes the ancient doctrine as set forth by Chandeswara. Srikrishna.

* Chudamani. † Srikrishna.
‡ Yajnyavalkya, 1. 61. Vide Manu, 3. 31—34. ‖ Chudamani.

of the woman, for only wealth received by the father or other person [who gives the girl in marriage] is denominated a gratuity. Thus Manu says, "Let no father, who is wise, receive a gratuity however small, for giving his daughter in marriage, since the man, who through avarice, takes a gratuity, is a seller of his offspring."§ Father is here a general expression [intending the person who gives away the damsel.||] Therefore, a brother, or any other person, accepting a present [for giving a girl in marriage,] is a receiver of a gratuity. Consequently, a gratuity (*Sulka*) is that which is accepted by the father or other person [so disposing of the damsel.]

25. And the restriction of it to the single case of an *Asura* marriage

25. Hence [since the gratuity belongs to the giver of the damsel, and not to the damsel herself,*] the argument is refuted, which has been thus proposed, that, as a woman's separate property received in the form of a gratuity (*Sulka*) is possible only in an *Asura* marriage, therefore the gifts of kindred and a gift subsequent, which are specified in the same passage (§ 10) shall also be inherited by the brother, provided they are relative to an *Asura* marriage.

26. The brother is heir to the fee or perquisite, under every form of marriage

26. But, since property, received as a fee or perquisite (*Sulka*) in the manner described (§ 19 and 21), is possible under every form of marriage, the brother is heir in all such instances, conformably with the text of [Yajnyavalkya.†] For it contains no restriction [to any particular form of marriage,‡ nor to that called *Asura* in particular.§]

27. A passage of Gautama conforms this

27. Thus the text of Gautama also conveys the same import with that of Katyayana (§ 12.) It is as follows: "The sister's fee belongs to the uterine brothers, after them, it goes to the mother; and next to the father. Some say, before her."**

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27. *And next, to the father.*] Jimuta-vahana reads and interprets this passages of Gautama differently from other compilers, by whom it is cited. The cause "and next, to the father," which Srikrishna reads in Jimuta-vahana's quotation, is not found in Gautama's text as exhibited in his institutes; nor is it noticed by his scholiast nor inserted in ancient quotations of this passage nor read by Achyuta in Jimuta-vahana's text. The scholiast, with Halayudha Chandeswara and others, expounds this passage 'The sister's gratuity belongs to the uterine brothers, after [the death of] the mother; some say before [her demise.]' an interpretation which as Achyuta observes, is rejected by Jimuta-vahana.

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* Manu 3. 51. † Srikrishna and Achyuta. ‡ Srikrishna.
|| Chudamani Vide § 10. ¶ Maheswara § Srikrishna
** Gautama, 28. 23. &c.

28. The meaning of the passage is this: in the first place that property goes to her brothers of the whole blood. But, on failure of them, it belongs to the mother. *In her default, it devolves on the father.** Some say before her. This is stated as the doctrine of others.

28. Exposition of the passage.

29. Therefore, the property goes first to the whole brothers; if there be none, to the mother: if she be dead, to the father; but, on failure of all these, it devolves on the husband. Thus Katyayana says, "That, which has been given to her by her kindred goes, on failure of kindred, to her husband."

29. On failure of brothers, the gifts of kindred go to the mother; or to the husband. So Katyayana ordains.

30. By saying, "on failure of the kindred," [or of the father and mother,†] the failure of brothers is likewise indicated. For, since the parent's right of succession is in default of brothers, [the failure of the preferable claim] must be concluded by the argument a fortiori exemplified in the case of the loaf and staff.‡

30. Explanation of the text.

31. On failure of heirs down to the husband, this rule again is provided, which Vrihaspati thus delivers, "The mother's sister, the maternal uncle, the father's sister, the mother-in-law, and the wife of an elder brother, are pronounced similar to mothers. If they have no issue of their bodies, nor son [of a rival wife,] nor daughter's son, nor son of those persons, the sister's son and the rest shall take their property.

31. On failure of heirs abovementioned collaterals inherit

A passage of Vrihaspati cited.

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28. *Some say before her.*] Some hold, that it devolves on the father next after brothers; and on the mother after him. Srikrishna.

Halayudha's interpretation 'some hold, that it devolves on the brothers, though the mother be living,' is thus set aside. Achyuta.

29. *Given to her by her kindred.*] Given by her father and mother. Achyuta.

* This sentence is wanting in some copies of Jimuta-vahana.

† Raghunandana &c.

‡ Vide C. 2, § 25.

32. And explained.

32. Both son and daughter are here signified by the terms issue of the body." For they bar every other claimant. By "son" is meant the child of a rival wife. For a passage of law expresses, "If, among all the wives of the same husband, one bring forth a male child, Manu has declared them all, by means of that son, to be mothers of male issue."* Nor is the term "son" an epithet of "issue of the body:" for it would be superfluous; and the sister's son or other remote heir would have the right of succession, though a son [or a grandson†] of a contemporary wife be living

33. The daughter's son succeeds on failure of the daughter and of male issue.

33. If there be no legitimate son or daughter, nor a grandson in the male line, nor a son of a rival wife, the right of succession devoloves on the daughter's son.

34. Nor the son of daughter's son.

34. By the pronoun in the phrase "son of those persons" (§ 31) the woman's own issue and the child of a rival wife are signified. Therefore, their sons have a right to inherit; not the son of a daughter's son also, for he is excluded from the oblation of food at obsequies.

35. That passage does relate to the right of succession.

35. For want then of sons and other lineal heirs as here specified, and in default of brothers or other preferable claimants, including the husband, the inheritance passes to

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32. *The child of a rival wife.*] The son of such wife; including also the sister of such son for the gender is here employed indefinitely, and, by means of her offspring, she becomes the giver of funeral oblations to the husband of the woman and his ancestors to the third degree. Srikrishna.

Including also adopted sons. Achyuta &c

33. *Nor a grandson, nor a son of a rival wife, the succession devolves on a daughter's son.*] This passage is censured by Srikrishna; who shows by very satisfactory reasoning, that the daughter's son ought to inherit before the son of a contemporary wife. Achyuta considers the reading of the text to be questionable, and Maheswara pronounces to be spurious He also rejects the words "nor a grandson" as unnecessary and improperly introduced in this place. Raghunandana, in the *Dayatatwa*, copying Jimuta-vahana's argument, omits this passage altogether, and the author of the *Viramitrodaya* has substituted one of quite different import.

34. *By the pronoun . . the woman's own issue and the child of a rival wife are signified.*] The pronoun refers not to the nearest term "daughter's son," but to the remote terms "issue of the body" and son of a contemporary wife." *Viramitrodaya.*

* Manu, 9, 188.

† Achyuta and Maheswara.

the sister's son and the rest, although kinsmen, as the father-in-law, the husband's elder brother, or the like, he living, For the next (§ 31) bears no other import; and the chief purpose of indicating, under the head of inheritance, the competency to present funeral oblation, as is done by describing the women as similar to mothers, and certain persons as standing in the relation to them of sons, is to suggest the right of succession to their property.

36. Hence, since the text enumerates "sister's son," &c, if the order of succession consequently be, first the sister's son, then the husband's sister's son, next the child of the husband's youger brother, afterwards the child of the husbands elder brother, then the son of the brother, after him the son-in-law, and subsequently the younger brother-in-law, the right would devolve last of all on the younger brother of the husband, contrary to the opinion and practice of venerable persons. Therefore, the text is propounded, not as declaratory of the order of inheritance, but as expressive of the strength of the fact, [namely of the benefits conferred,*] Thus it is declared by Manu, under the head of inhertiance, "The three ancestors must water be given at their obsequies; for three is the funeral oblation of food ordained: the fourth is the giver of oblations; but the fifth has no concern with them."† In like manner Yajnyavalkya shows succession to property in right of the funeral oblation: "Among these [sons of various descriptions,] the next in order is heir, and giver of oblations, on failure of the preceding."‡ The son's preferable right too appears to rest on his presenting the greatest number of beneficial oblations, and on his rescuing his parent from hell. And a passage of *Vruddha* Satatapa expressly provides for the funeral oblations of these woman: "For the wife of a maternal uncle or of a sister's son, of a father-in-law and of a spiritual parent, of a friend and of a maternal grandfather, as well as for the sister of the mother or of the father, the oblation of food at obsequies must be performed. Such is the settled rule among those who are conversant with the *Vedas*."

36. But not to the order of succession.

Passage of Manu, Yajnyavalkya and Satatapa show succession in right of benefits conferred.

37. This then is the order of succession, according to the various degrees [of benefit to the owner of the property§] from the oblation of food at obsequies. In the first place, the husband's younger brother is entitled to the woman's property; for he is a kinsman (*Sapinda*) and presents oblations to her, to her husband, and to three persons to whom oblations were to

37 The order of succession is as follows:— First the husband's younger brother.

* Srikrishna and Chudamani.

† Manu, 9. 186. ‡ Yajnyavalkya, 2. 135. § Maheswara.

be offered by her husband, After him, the son either of her husband's elder or of his younger brother, is heir to the separate property of his uncle's wife; for he is a kinsman, and presents oblations to her, to her husband, and to two persons to whom oblations were to be offered by her husband.

Then the son of the brother-in-law.

On failure of such, the sister's son, though he be not a kinsman (*Sapinda*) inherits the separate property left by his mother's sister, because he presents oblations to her, and to three persons, (her father and the rest,) to whom oblations would have been offered by her son.

Next the sister's son.

In default of him, the son of her husband's sister (for it is reasonable, since the husband has a weaker claim than the son, that persons claiming under them should have similar relative precedence;) is heir to the property of his uncle's wife; because he presents oblations to three persons to whom they were to be offered by her husband, and also presents oblations to her and to her husband.

Afterwards the husband's sister's son.

On failure of him, the brother's son is the successor to his aunt's property, for he presents oblations to the father, to her grandmother, and to herself.

Then the brother's son.

If there be no nephew, the husband of her daughter is heir to his mother-in-law's property, since he presents oblations to his mother-in-law and father-in-law.

Lastly the son-in-law.

38. The text (§ 31) indicates heirs, not their order of succession.

38. This order of succession must be assumed: and the mention of "a sister's son" and the rest (§ 31) was intended merely for an indication of the heirs, without specifying the order in which they succeed.

39. If those fail, the husband's father, elder brother, &c. inherit.

39. Again, on failure of these six, it must be understood, that the succession devolves on the father-in-law, the husband's eldest brother and the rest, according to their nearness of kin [the nearest *Sapinda* being the heir.*]

40. The failure of these heirs was not implied in the text.

40. It must not be supposed, that this text (§ 31) is applicable where a failure of kinsmen (*Sapinda*) exists: for, in this chain of successors, the husband's younger brother, and his son, and the son of the husband's elder brother, have been specified, and the husband's father and elder brother, who are nearer of kin, have been omitted.

41. A contrary practice must be rejected as unauthorised.

41. Therefore, the practice [of preferring the father-in-law to the younger brother-in-law,† or of regulating the succession in the order specified in the passage above cited, § 31 ‡] which has been introduced for want of comprehending the text [of Vrihaspati, § 31 ‖ or those of Manu and Yajnyavalkya, ¶] and of understanding the true sense of the law, must be rejected as destitute of reason and authority, by those who like us§ submit to demonstration.

* Maheswara. † Maheswara. ‡ Srikrishna.

‖ Maheswara. ¶ Srikrishna. § Maheswara.

42. Thus has succession to the separate property of a childless woman been explained. 42 Conclusion.

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SUMMARY.

The settled order of succession to the separate property of a woman is as follows :—

In the case of property left by a maiden the right devolves first on the uterine brother ; or, if there be none, on the mother, but, if she be dead, on the father.

It is the same in respect of property left by betrothed damsel, excepting what was given by the bridegroom : for he has a right to whatever he gave.

In regard to the property of a married woman, which was received at her marriage, her maiden daughter has the first claim , and next, a betrothed one but, on failure of both these, her married daughters, who have, or are likely to have, male issue, inherit together ; or, on failure of either of them, the other takes the succession : if there be none of either description, the barren and the widowed daughters have an equal right , and, on failure of one, the other succeeds. Next hte right devolves, in order, on the son, the daughter's son, the son's son, the great-grandson in the male line, the son of a contemporery wife, her grandson and her great-grandson in the male line, with this difference, that, according to the (Jimutavahana) the right of the daughter's so contemporary wife's son

In the next place, if the property were received at the time of nuptials celebrated in one of the five forms denominated *Brahma* &c. the order of successors is husband, brother, mother, and father. But, if it were received at nuptials in one of the three forms called *Asura* &c. the order is mother, father, brother and husband.

Then the husband's younger brother , after him, the son of the husband's younger brother, and the son of his elder brother ; next, the sister's son ; afterwards, the husband's sister's son ; then the brother's son ; after him, the son-in-law ; next, the father-in-law ; subsequently, the elder brother-in-law In the next place, kinsmen, allied by funeral oblations (*sapindas,*) in the order of proximity ; after them, kinsmen connected by family (*sakulyas* ;) and, lastly, such as are allied by similar oblations of water (*samanodakas.*)

In the case of property given by the father at any other time but the wedding, a maiden daughter succeeds in the first instance ; next a son ; then a daughter who has, and one who is likely to have, male issue ; after them, the daughter's son, the son's son, the great-grandson in the male line, the son of a contemporary wife, and her grandson and great-grandson in the male line : next to these, the barren and widowed daughters inherit together . afterwards the succession proceeds as before described in the case of property received at nuptials denominated *Brahma* &c.

SUMMARY—*(Continued.)*

But, in the instance of property not received at a wedding, and other than such as is given by the father, the son and unmarried daughter inherit together; or, on failure of both of them, the daughters, who have, or may have, male issue, and, afterwards, the son's son, the daughter's son, the great-grandson in the male line, the son of the contemporary wife, her grandson and great-grandson in the male line, are rightful claimants in succession, next to these, the barren and widowed daughters inherit together and lastly the order is, as before, the same with that of property received at *Brahma* nuptials. Srikrishna.

CHAPTER V.

Exclusion from Inheritance.

1. In the next place, persons incompetent to inherit are specified, for the purpose of making known, by the exception competent heirs. On this subject Apastamba says, "All eoheirs, who are endued with virtue, are entitled to the property. But he, who dissipates wealth by his vices, should be debarred from participation, even though he be the first born."

1. Who are competent to inherit may be known from the specified exception of such as are not.
A passage of Apastamba quoted.

2, This passage is read by Balaka in a confused manner and contrary sense: "But he, who acquires wealth by his virtuous conduct, being the eldest son, should be made an equal sharer with the father." That reading is unauthorised.

2. A different reading of it condemned.

3. So "The heritable right of one who has been expelled from society, and his competence to offer oblation of food and libation of water, are extinct."* One who has been expelled from society, is a person excluded from drinking water in company.

3. Another passage.
A man expelled for crimes is incapable of inheriting.

4. So Vrihaspati says: "Though born of a woman of

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1. *Expelled from society*] Deemed unworthy of intercourse. In consequence of offences, or degration from class, water is not drunk in company with him. Chudamani and Srikrishna.

Formally banished, with the ceremony of kicking down a jar of water, as described by Yajnyavalkya. Achyuta.

Excluded on account of wickedness, by all his kinsmen, from the oblation of food and libation of water. Maheswara.

4. *Destitute of devotion and knowledge*] Some copies of Jimutavahana read generosity (*dana*) in place of knowledge (*janyan*) or

* Cited in the *Viramitrodaya* as a passage of Apastamba; but in the *Virada Chintamani* and *Smritisara*, it is referred to Sankha; and in the *Ratnakara*, *Smriti-Chandrika* &c. to Sankha and Likhita.

pati excludes the vicious from inheritance.

equal class, a son destitute of virtue is unworthy of the paternal wealth. It is declared to belong to such kinsmen offering funeral oblations [to the owner,*] as are of virtuous conduct. A son redeems his father from debt to superior and inferior beings. Consequently there is no use for one who acts otherwise. What can be done with a cow which neither gives milk, nor bears calves? For what purpose was that son born, who is neither learned nor virtuous? A son, who is devoid of science, courage and good purposes, who is destitute of devotion and knowledge, and who is wanting in conduct, is similar to urine and excrement."

5. A passage of Apastamba.

5. Apastamba says, "A son, who diligently performs the obsequies of his father and other ancestors, is of approved excellence, even though he be uninitiated: not a son who acts otherwise, be he conversant even with the whole *Veda*."

6. A son's right of succession is the the reward of benefits conferred on his father; as appears from passage of Manu.

6. "Since a son delivers his father from the hell called *put*, therefore he is named *puttra* by the self-existent himself."† By this and similar passages, great benefits are stated, as effected by means of a son. His connection with the property is therefore the reward of his beneficial acts. If then he neglect them, how should he have his hire? Accordingly Manu says, "All those brothers, who are addicted to vice, lose their title to the inheritance."‡

7. Manu enumerates disqualified persons.

7. So [the same author:] Impotent persons and outcasts are excluded from a share of the heritage; and so are per-

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vijnyana,) which is the reading of other copies, as well as the quotations occurring in various compilations.

7. *Those who have lost a sense or a limb.*] Literally an organ; ex-

* Maheswara.

† Manu, 9, 138. Vishnu, 45, 43. Vide Infra C. II. Sect. I. § 31.

‡ Manu 9, 214.

sons born blind and deaf; as well as madmen, idiots, the dumb, and those who have lost a sense [or a limb."*]

8. Katyayana defines impotency.

8. The impotent person is described by Katyayana: That man is called impotent, whose urine froths not, whose faces sink in water, and whose virile member is void of erection and of seamen"

9. Exposition of the text of Manu (§ 7.)

9. The term 'born' is connected in construction with the words 'blind' and 'deaf.' One who is incapable of articulating sounds, is dumb. An idiot is a person not susceptible of instruction.

10. A similar passage of Yajnyavalkya

10. Yajnyavalkya says, "An outcast and his issue, an impotent person, one lame, a madman, an idiot, a blind man, a person afflicted with an incurable disease, (a) must be maintained: excluding them however from participation."† One, who cannot walk, is lame.

11. Those debarred from inheriting should be maintained; excepting the outcast and his son.

A passage of Devala cited and explained.

11. Although they be excluded from participation, they ought to be maintained, excepting however the outcast and his son. That is taught by Devala: "When the father is dead [as well as in his life-time‡] an important man, a leper, a madman, an idiot, a blind man, an outcast, the offspring of an outcast, and a person wearing the token [of religious mendicity,] are not competent to share the heritage. Food and raiment should be given to them, excepting the outcast. But the sons of such persons, being free from similar defects, shall obtain their father's share of the inheritance." A person wearing the token of mendicity is one who has become a religious wanderer or ascetic.

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plained by some a sense as that of smelling, or of sight &c. but by others a limb, as the hand, foot and so forth.

10. *As well as others*] This is a part of the text as read by the *Mitakshara*, *Smriti-chandrika* and *Ratnakara*. But Jimutavahana and Vachaspati Misra read *arta* afflicted,' in place of *adya* others.

11. *Excepting the outcast and his son.*] Meaning a son begotten after the degradation of the father. Srikrishna.

12. *Wearing the token of mendicity.*] The term *lingi* is understood by Jimutavahana as signifying a person who has entered into a

* Manu, 9. 201, † Yajnyavalkya, 2, 141. ‡ ...

(*a*) Colebrooke here puts in [as well as others similarly disqualified.] It will not be correct to do so.—Ed.

12. A son born after the degradation of his father is an outcast. Baudhayana cited.

12. By the term outcast, his son also is intended; for he is degraded, being procreated by an outcast. That is confirmed by Baudhayana, who says, "Let the coheirs support with food and apparel those who are incapable of business, as well as the blind, idiots, impotent persons, those afflicted with disease and calamity, and others who are incompetent to the performance of duties: excepting however the outcast and his issue."

13. Narada's enumeration of disqualified persons.

13. On this subject, Narada says, "An enemy to his father, an outcast, an impotent person, and one who is addicted to vice [or has been expelled from society,] take no shares of the inheritance even though they be legitimate: much less, if they be no sons of the wife by an appointed kinsman."*

14. Katyayana specifies others.

14. Katyayana ordains, that "The son of a woman married in irregular order; and begotten on her by a kinsman, is unworthy of the inheritance; and so is an apostate from a religious order."

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religious order, of which he wears the symbol But other compilers (as the authors of the *Ratnakara*, *Smriti-chandrika* &c) explain it a hypocrite and impostor, or a secretary and heretic.

13. *One who is addicted to vice.*] So the term, as read by Jimutavahana, is explained by his commentator Maheswara. In the *Prakasa* it is read *apapatakı* instead of *aupapatika*, and is similarly explained, according to the quotation in the *Ratnakara*. But the reading, which there is preferred, as well as in the *Kalpataru*, is *apapatrita*, signifying 'expelled from society for heinous crimes;' and the word is written *avapataka* in the *Smriti-chandrika*, but interpreted in the same sense. Raghunandana reads, as Jimutavahana, *aupapatika*, and expounds it 'one stained with sins.'

14. *Son of a woman married in irregular order, and begotten on her by a kinsman.*] This version is conformable to Jimutavahana's interpretation [§ 15.) which is copied in the *Viramitrodaya*. But in the *Smriti-chandrica*, *Ratnakara* and *Chintamani*, the members of the sentence are separated: "The son of a woman married in irregular order is unworthy of the inheritance, and so is the son of a woman espoused by her kinsman, as well as an apostate from a religious order."

Is unworthy of the inheritance.] The *Ratnakara* and *Chintamani* read *na rictan tesha carhichit*, "the inheritance never goes to them," instead of *na ricthau teshu charhati*, "the inheritance is not fit to go to them." that is, as observed in the *Smriti-chandrika*, "they are unworthy of it."

* Narada, 13, 21.

15. If a woman of superior tribe be espoused after marrying one of inferior class, both marriages are contrary to regular order. The son of either of the women, being *kshetraja*, or issue of the wife, procreated by a kinsman authorized to raise up issue to the husband, is unworthy of the inheritance. But a son begotten by the husband himself, being of the same tribe, on his wedded wife espoused in irregular order, is heir to the estate: so likewise is a son begotten by the husband on a wife dissimilar in class but espoused in regular gradation. **15. Interpretation of his text.**

16. That is declared by the Katyayana: "But the son of a woman married in irregular order, may be heir: provided he belong to the same tribe with his father: and so may the son of a man, belonging to a different [but superior*] tribe, by a woman espoused in the regular gradation. The son of a woman married to a man of interior tribe, is not heir to the estate. Food and raiment only are considered to be due to him by his kinsmen. But, on failure of them, he may take the paternal wealth. The kinsmen shall not be compelled to give the wealth received by them, not being his patrimony" **16. A further passage of Katyayana.**

17. A possibility exists of an impotent man, and the rest as above enumerated (§ 7,) espousing wives. "If the eunuch and the rest should at any time desire to marry, the offspring of such as have issue, shall be capable of inheriting."† Issue signifies offspring **17. Disqualified persons may have issue.**

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15. *Begotten on a wife dissimilar in class, but espoused in regular gradation.*] Begotten by a man of superior tribe on a woman of inferior class. Srikrishna.

16 *Food and raiment only*] This is Jimutavahana's reading *grasachhadana-matram*. But the *Smriti-chandrika* and *Ratnakara* read *grasachhadanamatyantam*, "food and raiment for life.'

Not being the patrimony.] The commentators, Srikrishna and Achyuta, state another reading in the first instance *swapitryam* "[their] own patrimony" instead of *apitryam* "not [his] patrimony] They notice, however, this last reading, as one which may have been intended by the author. It is that which the *Smriti-chandrika*, *Ratnakara* and other compilations exhibit. Srikrishna and Achyuta deduce the the same meaning in both ways of reading the text. But Maheswara understands the passage differently: 'The kinsmen shall not be compelled to give up to him wealth received by them

* Chudamani.

† Manu, 9, 203.

18. An objection answered.

18. It must not be objected, how can they contract marriages, since the eunuch, not being male, is incapable of procreation, and the dumb man and the rest [or those born deaf or blind] are degraded for want of initiation and investiture, because they are unapt for [the preparatory] study? The eunuch may obtain issue from his wife by means of another man: and a person unfit for investiture with the sacerdotal string is not degraded from his tribe for want of that initiation, any more than a *Sudra*.

19. Sons of the qualified persons inherit, if free from similar defects.

19. Therefore the sons of such persons, being either their natural offspring or issue raised up by the wife, as the case may be, are entitled, provided they be free from similar defects, to take their allotments according to the pretentions of their fathers. Their daughters must be maintained until married, and their childless wives must be supported for life.

This is confirmed by a passage of Yajnyavalkya.

It is so declared by Yajnyavalkya: "Their sons whether legitimate or the offspring of the soil, are entitled to allotments if free from similar defects. Their daughters also must be maintained until provided with husbands. Their childless wives, conducting themselves aright, must be supported: but such as are unchaste, should be expelled; and so indeed should those who are perverse."*

20. Conclusion.

20. Thus it has been explained, who are persons incompetent to inherit.

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being his own patrimony.' they shall not be compelled to share it with him; but he must be maintained by them with food and raiment. Chudamani, again, follows the other reading, but with a different interpretation. 'The kinsmen shall not be compelled to give up his father's wealth, received by them, though not their patrimony.'

19. *As the case may be.*] A dumb man or the like may have either natural offspring or issue raised up to him by his wife. But the impotent can only have issue so raised. Srikrishna.

Allotments according to the pretentions of their fathers.] Such allotment as their fathers would have had if capable of inheriting. Achyuta.

Such share as should have belonged to their respective fathers, according as these may be either sons of a *Brahmani* woman, or of a *Kshatriya*, or of a woman of another tribe. Srikrishna.

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* Yajnyavalkya, 2, 142 and 143.

CHAPTER VI.

Effects liable, or not liable, to Partition.

SECTION I.

1. In the next place, effects which may be divided, and such as are exempted from partition, are here explained. On that subject Katyayana says, "What belonged to the paternal grandfather, or to the father, and anything else [appertaining to the coheirs, having been] acquired by themselves; must all be divided at a partition among heirs."

1. The patrimony and joint stock may be divided · as is declared by Katyayana.

2. And anything else.] Here the particle 'and' is connected, in the sentence, with the term 'themselves :' viz., 'acquired by themselves,' or, as implied by the conjuctive particle, acquired by another person : but his acquisition must have been made through the common property [or else by joint personal labour *] Such is the meaning.

2. Exposition of his text.

3. Manu and Vishnu declare indivisible what is gained without expenditure. "What a brother has acquired by his labour, without using the patrimony, he need not give up without his assent; for it was gained by his own exertion."†

3. Separate acquisitions are not to be shared: according to Manu and Vishnu.

4. Since the patrimony is not used, there is no exertion on the side of the others, through the means of the common property : and, since it was obtained by the man's own labour, there is no corporal effort on the part of the rest : it is, therefore, the separate property of the acquirer alone; for the phrase "it was gained by his own exertion," is stated as a reason.

4. Reason of the exception from participation.

5. So Vyasa ordains : "What a man gains by his own ability, without relying on the patrimony, he shall not give up to the coheirs; nor that which is acquired by learning."*

5. It must be an acquisition effected without use of the joint funds as Vyasa declares.

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1. *To the paternal grandfather.*] Meaning any relation in general. Srikrishna and Achyuta.

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*Chudamani and Srikrishna,

† Manu, 9, 208. Vishnu, 18, 42. Vide infra. § 31. The second half of the stanza is read otherwise in the *Mitakshara*, Ch. 1. Sect. 4. § 10.

6. Exposition of the text. The gains of of science are excepted.

6. Since it is expressed in general terms, 'what he gains 'solely by his own ability,' all property, so acquired, being his own, is not common. But, as the gains of science, though obtained by the man's own ability, are shared by parceners equal or more proficient in knowledge, the phrase "nor that which is acquired by learning," is subjoined for the sake of excluding illiterate or less learned parceners.

7. Other separate gains instanced by Yajnyavalkya.

7. So Yajnyavalkya directs: "Whatever else is acquired by the coparcener himself, without detriment to the father's estate as a present from a friend, or a gift at nuptials, does not appertain to the coheirs."†

8. Explanation of his text.

8. Here, the mention of "a present from a friend" and so forth is intended for illustration only; since it is in such modes that acquisitions are usually made without expenditure.

9. A passage of Manu quoted.

9. So Manu likewise says: "Wealth, however, acquired by learning, belongs exclusively to him, who acquired it; and so does any thing given by a friend, received on account of marriage, or presented as a mark of respect."*

10. One of Vyasa.

10. Vyasa [delivers a similar precept:] "Wealth gained by science, or earned by valour, or received from affectionate kindred, belongs at the time of partition, to him [who acquired it;] and shall not be claimed by the coheirs."

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6. *His own.*] Acquired with his own wealth and by his own labour only. Srikrishna.

Not common.] Not liable to be shared with the rest of the brothers. Srikrishna.

9. *Exclusively.*] An illiterate person, and one of inferior learning, are thus excepted. Srikrishna.

On account of marriage.] Received from a father-in-law, on account of becoming his son-in-law. Srikrishna.

As a mark of respect.] Obtained by officiating as a priest. Srikrishna.

As a mark of respect at the time of giving a *madhuparka*. The interpretation of the word *madhuparkika*, by Medhatithi and Govindaraja, who explain it 'wealth gained by officiating as a priest,' is erroneous, since that is gained by science. (See Katyayanas.) Kulluka-Bhatta.

* Vide infra, § 35. † Yajnyavalkya, 2, 119. Vide infra, § 34.

11. What is obtained through favour or the like, from a father, uncle, or other kind relations, is received from affectionate kindred. **11. Gift of affectionate kindred explained.**

12. Narada similarly says, "Excepting what is gained by valour, the wealth of a wife, and what is acquired by science, which are three sorts of property exempt from partition: and any favour conferred by a father."† **12. A passage of Narada cited.**

13. What was received at the time of obtaining a wife is here called the "wealth of a wife;" meaning effects obtained on account of marriage. Excepting these acquisitions (§ 12), let him divide other property; for this phrase is here understood, as expressed in another sentence. **13. Exposition of the text. Excepting the above, other property may be divided.**

14. By these and other similar passage, the circumstance of the property having been acquired by valour or the like, is not stated as a sufficient reason for its being exempt from participation; since a distribution even of property so acquired, is expressly ordained in certain cases. Thus Vyasa directs a partition of effects so gained, with the use of the common goods. "The brethren participate in that wealth, which one of them gains by valour or the like, using any common properly, either a weapon or a vehicle. To him two shares should be given: but the rest should share alike." So Narada ordains: "He, who maintains the family of a brother studying science, shall take, be he ever so ignorant, a share of the wealth gained by science."* **14. Such gains are sometimes liable to be shared: as declared by Vyasa, and Narada.**

15. Since the term "maintained" is exhibited in the singular number, if the family of the brother, who is studying science, be made to prosper by another brother at the expense of his own wealth, or by the labour of his body, then he also has a title to property gained by the science. **15. Especially the gains of science.**

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11. *Received from affectionate kindred.*] Since property, termed *Saudayika* is exempt from partition as being the separate property of a woman (Ch. 5, Sect. 1, ‡ 21), the author expounds the term otherwise. Maheswara.

12. *The wealth of a wife.*] Since the separate wealth of a .wife cannot be supposed liable to partition (for it is her peculiar property,) the author expounds the text otherwise. Srikrishna.

14. *Ignorant.*] Illeterate. Srikrishna.

15. *Since the term is exhibited in the singular number.*] For it may be informed from the use of the singular number, that the act is independent of any thing else. This independency is an independence of the

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* Manu, 9, 206. Vide infra, § 31. † Narada, 13, 6. Vide infra, § 33.
‡ Narada, 19, 4. ‖ Vide Sect. 2 § 1.

16. Another passage of Narada.

16. So [the same legislator says,] "A learned man need not give a share of his own acquired wealth, without his assent, to an unlearned coheir: provided it were not gained by him using the paternal estate."*

17. The gains of science need not, however, be shared with an unlearned coheir. So Gautama declares.

17. The word "paternal" intends joint property. What has been gained by him without using that, a learned man need not give up, against his will, to an unlearned coheir. But to a learned or instructed coheir, he must give a share of anything acquired by him, even without the use of joint property. Accordingly Gautama says, "His own acquired wealth, a learned man need not give up, against his inclination, to unlearned coheirs."†

18. Interpretation of the text.

18. What is gained by his personal labour on his separate funds, being his own acquired property, he need not give up, if he be unwilling to surrender it, unto unlearned coheirs: but he must yield it to learned brethren.

19. It relates to the gains of science, agreeing with a passage of Katyayana. They are shared with such as are equally or more learned

19. This, however, relates only to the gains of science. So Katyayana declares: "No part of the wealth which is gained by science, need be given by a learned man, to his unlearned coheirs: but such property must be yielded by him, to those who are equal or superior in learning."

20. Exposition of the text.

20 The word learning, expressed in the text, [and occurring there once only‡] is connected with both terms, "equal"

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common property, as well as of the separate property of their brothers or coheirs. Hence, if the support were afforded by two, or by three, unlettered coheirs, all these shall participate. Srikrishna.

By exhibiting the term in the singular number, an exception to the joint property is indicated, and not exclusion of other brothers supporting the family by their labour, or by the expenditure of their own wealth. Hence two such brothers would also take a share of the property gained through science. Maheswara

16. *Using the paternal estate*] This regards the employment of funds otherwise than for food and raiment for wealth must be used for such purposes even by a person remaining at home. Chudamani and Srikrishna.

17. *Intends joint property*] Else, there would be no partition, if the estate of the grandfather or other ancestor were used.

19. *This relates only to the gains of science.*] For any other property, acquired by himself, need not be surrendered, either to learned or unlearned coheirs. Srikrishna.

* Narada, 13, 11. † Gautama, 8, 28. ‡ Srikrishna.

and "superior." Therefore, it must be yielded to such as are equal or superior in learning: not those who are less learned, or who are unlearned have no right to participate.

21. The essential condition is, that no use have been made of joint funds. A passage of scripture, to that effect, may be supposed.

21. Since it appears from these and other texts, that partition does or does not take place, in the case of wealth acquired by science, valour or the like, according as joint property is or is not employed; and since this alone is the reason; a revealed maxim, containing that term only, must be inferred in words such as these, 'divide that, which is acquired by use;' not one containing also the terms 'gained by valour' and so forth: for the purpose is accomplished by the general maxim, which must necessarily be inferred.

22. This is confirmed by the Mimansa.

22. This is precisely the object of the reasoning taught [in the *Mimansa*] under the head of *Holaca*.

23. Or the rule may be grounded on reason:

23. Or the same meaning may be deduced from reasoning [without the trouble of inferring the origin of the rule from a lost passage of scripture*]. That which is acquired by a person, belongs exclusively to him, so long as he lives; if there be no special rule [to the contrary]: but, where the

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21. *Since this alone is the reason*] Since the making of the acquisition with or without the use of such property is alone the reason: since acquisition with the use of it is a ground of partition; and without such use, a ground of exemption from partition. Srikrishna.

The general maxim which must be inferred.] One, as above stated, which does not contain the terms 'gained by valour &c.' For it would be needless trouble to assume a maxim containing these terms, in such form as follows: 'divide that which is gained by valour or the like without use.' Srikrishna.

22. *Reasoning taught under the head of Holaca.*] It is the 8th topic *(adhicarana)* of the 3rd chapter of the 1st book. The purport of it may be thus stated the Holaca or festival of the spring *(Vasantotsava)* is celebrated by the *Prachyas* or eastern Indians; and, in like manner, other observances are peculiar to other people: that is, (as remarked by commentators,) *Udvrishabha-yajnya*, which consists in driving a bull after worshipping him, is practised by the *Udichyas* or northern *Indians*; and the *Ahninaibuca* or worship of certain trees, or other particular objects, as deities, by the *Dakshinatyas* or southern *Indians*. These local usages are concluded to be founded on some precept is inferred to be a general one, not a special one restricted to the particular people among whom the usage prevails. Vide Ch. 2. § 40.

23. *In proportion to the amount of his allotment,*] In the case of wealth gained with the use of the common stock of brothers ranking in different tribes, the use has been of four shares appertaining to the son of the *Brahmani* wife, and three, two and one shares belonging to the sons

* Maheswara, Achyuta, &c.

and shares of the gain should be proportionate to shares of the stock.

exertion of one is merely through the joint property, and wealth, it is a rule suggested by reason, that the one shall have a single share, and the other two. Hence likewise it follows, that, if the joint stock be used, shares should be assigned to each person in proportion to the amount of his allotment, be it little or much, which has been used.

24. Katyayana provides a rule concerning reunited parceners.

24. Moreover the text of Katyayana [is simarily founded on reason.] When brethren separated in regard to the "patrimony, and subsequently living anew together, make a [second] partition, he, from whom an acquisition has proceeded, shall again take a double share."

25. Srikara's exposition of the text.

25. This is expounded by Srikara as signifying, that 'a reunited parcener, who has made an acquisition with the 'use of the joint stock, shall have two shares ; and the rest, one apiece.'

26. A gain, made on separate funds, is separate property.

26. Hence it appears to be the opinion both of the saint and of the commentator, that wealth, gained with no use of the common funds, appertains exclusively to the acquirer, even in the instance of a reunion of coparceners ; and that such wealth is not joint property : since no small allotment is directed in the case of a gain made without use of joint stock.

27. The same is proper before a first partition.

27. Such being their meaning, the same is equally proper for the unseparated coparcener, as for the reunited one : because residence in the same abode [which implies junction of property*] is equally pertinent as a reason, when separation has not yet taken place, as when it has been annulled. Since the text is likewise pertinent, as directing, that the acquirer

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of the *Kshatriya* and the rest. In such an instance, their shares of the gain should be assigned in exact proportion to their respective allotments of the stock. Srikrishna.

26. *Of the saint and of the commentator.*] Of the saint ; that is, of Katyayana : for, after specifying residence in the same abode, he propounds a double share, if the joint stock have been used ; and does not direct an allotment in the case of wealth acquired with no use of common funds. Of the commentator ; that is, of Srikara : for he has expressly so interpreted the text. Srikrishna.

27. *For reasoning opposes that restriction.*] As a precept of revelation is inferred in these terms,' the Holaca should be performed,' to authorize the observance of that festival ; and not one containing the term *Prachya* indicating the particular people who practice it : so a precept of revelation is inferred in these terms 'the acquirer shall take two shares of wealth gained with the use of common property ,' not one containing the term 'reunited parcener,' as a restrictive epithet of the acquirer. Srikrishna.

* Srikrishna and Achyuta.

shall have two shares of an acquisition made with the use of common property, it is not right to restrict it to the case of reunited parceners : for the reasoning, taught under the head of *Holaca*,* opposes that restriction.

28. Besides, it is an uncontested rule, that an acquirer, as such, shall have two shares of wealth gained by the use of joint funds : for that allotment has been ordained by a text [of Vyasa] above cited (§ 14) in the single case of the use of common stock. It is not reasonable to assign two shares only in the instance of an acquisition made by personal exertion upon separate funds but something more [than two shares†] would be reasonable ; either the whole, or something less [than the whole.‡] Here, since something less [than the whole ||] has not been directed either by sages or by compilers ; and since it appears, that the rest of the brethern participate [in one case] on account of the employment of their common stock ; it is fit, that their participation should be null [in another case] where that does not exist.

28. An acquirer using joint stock has two shares. Not using it, he should have the whole.

29. The rule, that the acquirer shall have twice as much as the rest, must be grounded on reasoning ; otherwise, if its foundation in a passage of scripture is to be assumed, ¶ and reasoning is not to be taken as its ground. § it would be necessary either to insert in the maxim of revelation in question, the condition of a gain made [by the father who is declared entitled to two shares :**] or else to establish separately the title [of an acquirer to a double share.]††

29. The rule is founded in reason ;

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28. *Where that does not exist.*] Where neither the use of the joint funds, nor a common exertion of the rest of the brethern, exists ; either of which would be a reason for the participation of the coheirs. Srikrishna.

29. *Otherwise it would be necessary to insert &c.*] If it be not founded on reasoning , the condition that he be the acquirer, must be inserted in the revealed maxim ' Let the father reserve two shares for ' himself ' If then a passage of scripture be assumed in this form ; ' let the father, who has made an acquisition, would not have a double share ; nor ould a brother or their coheir, who was the acquirer of the property, have - double allotment The author therefore adds, ' or else to establish separately the title.' The distinct right of an acquirer, independently of paternity or other particular relation, must be separately established. Consequently, since it would be troublesome to infer a foundation in scripture n both points, it is right to ground the rule on reasoning. Srikrishna.

* Vide § 22. † Chudamani and Srikrishna ‡ Ibid.
|| Ibid. ¶ Maheshwara. § Srikrishna. ** Srikrishna, Chudamani &c.
†† Ibid.

30. And the conclusion is true.

30. It is therefore true, that wealth gained without use of joint stock belongs to the acquirer alone, not to the rest of the coparceners.

31. It is no general rule, that gains, made before partition, shall be shared. A passage of Manu cited and of Manu and Vishnu.

31. Moreover, a general maxim [of scripture*] to this extent, 'Let all share what is gained by an unseparated 'coparcener,' cannot be inferred For an exception to wealth acquired by valour or the like [without use of the joint† stock†] does occur. Thus Manu says, "Wealth, however, acquired by learning, belongs exclusively to him, who acquired it: and so does anything given by a friend, received on account of marriage, or presented as a mark ef respect."‡ So Manu and Vishnu ordain, "What a brother has acquired by his labour, without using the patrimony, he need not give up without his assent; for it was gained by his own exertion."‖

32. Exposition of those text.

32. Without using.] This is connected likewise with wealth acquired by learning: for, in such instances also, a precept, ordaining partition if joint funds be used, does occur.

33. Passages of Yajnyavalkya

33. Thus Yajnyavalkya says. "Whatever else is acquired by the coparcener himself, without detriment to the

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31. *Moreover a general maxim &c. cannot be inferred.*] If the rule were founded on reasoning, the acquirer's allotment should be proportionate to his exertion · and a general direction for his taking a double share would consequently be improper. Hence it is right, that the acquirer's double portion should be grounded on a general maxim of revelation in these terms, 'the acquirer has two shares of what is gained before partition, and the rest have one a piece.' accordingly, it is seen in the practice of the world, that, in the instance of wealth accepted as a present, though it be gained without use of joint stock, all participate on the sole ground of its being acquired by an unseparated coparcener. Weighing this opinion of Srikara, the author censures it. Srikrishna.

32. *With wealth acquired by learning*] With the gains of science mentioned in the preceding text. (Manu, 9, 206). Srikrishna.

The term, 'gains of science,' contained in the preceding passage of Manu, is here understood. Maheswara.

One commentator reads in Jimuta-vahana's text *anushajyate* "is understood," where the other roads *Sambadhyate* "is connected." Hence a difference in their manner of stating the same meaning.

A precept ordaining partition, does occur.] Alluding to a passage above cited (§ 16), containing the reservation, "provided it were not gained by him using the paternal estate" Chudamani and Srikrishna.

33. *Hereditary property.*] This comprehends any common pro-

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* Maheswara. † Srikrishna and Chudamani.

‡ Manu, 9. 206. *Vide* supra. § 9.

‖ Manu, 9. 208. Vishnu, 18, 42. *Vide* supra. § 3.

father's estate, as a present from a friend, or a gift at nuptials, does not appertain to the coheirs. Nor shall he, who recovers hereditary property, which had been taken away, give it up to the coparceners: nor what has been gained by science."* So Narada: "Excepting what is gained by valour, the wealth of a wife, and what is acquired by science, which are three sorts of property exempt from partition; and any favour conferred by a father."† Likewise Vyasa: "Wealth gained by science, or earned by valour, or received from affectionate kindred, belongs at the time of partition, to him [who acquired it,] and shall not be claimed by the coheirs."‡

Narada, and Vyasa.

34. Received from affectionate kindred.] Obtained from kind relations.

34. Interpretation of the text.

35. "What is given by the paternal grandfather, or by the father, as a token of affection, belongs to him [who receives it;] neither that, nor what is given by a mother, shall be taken from him. What a man gains by his own ability, without relying on the patrimony, he shall not give up to the coheirs, nor that which is acquired by learning."*

35. Anothe passage of Vyasa.

36. By thus excepting, under these and other texts, in regard to all the tribes and all the classes of mixed or of mediate origin, wealth acquired, without the use of the joint stock, by the acquirer's own ability; whether affected by means of any science; or received from affectionate kindred (being given by a relative;) or obtained from a friend, or at nuptials, or with a token of respect; or gained by valour (that is by combat or the like;) or earned by labour (that is by agriculture, service, merchandize &c.); every acquisition [made without use of joint funds†] is excepted: therefore, since there can be none other, the [alleged] precept has no pertinence.

36. The supposition of such a rul (§ 31) is erroneous.

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perty. The same rule consequently holds good in regard to the wealth of the brethern, which they themselves acquired Srikrishna.

34 *Obtained from kind relation.*] This is not tautology; but merely intended to remind the reader of a preceding remark. [Vide § 11.) Maheswara.

36. *The tribes.*] The four tribes, *Bramana &c*

Classes of mediate origin.] The *Ambashata*, the *Karana* &c.

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* Yajnyavalkya, 2. 119 & 120. *Vide* supra, § 7.
† Narada, 13. 6. *Vide* supra, § 12. ‡ *Vide* supra, §10.
* Vide supra, § 5. † Srikrishna and Chudamani.

37. For reasons here stated.

37. Or a case or two [of acquisition made without use of the common stock*] may be, in some manner assumed, to which the precept may relate Still those cases should have been declared by express words · since it would have been easy for the sages to have said, 'divide certain property would be readily understood under its own name; better than by using a long and circuitous expression, like this [' wealth acquired before partition,†] other than the gains of valour &c. [acquired without use of joint funds;‡] for it is burdensome And, if the present be intended as an exception all the sages ought to specify every excepted term for without that, the meaning of "other than such" would be unexplained; and the restrictive words of the sages would consequently appear as idle as the prattle of children. But, if it be intended for illustration, then some one instance is negligently propounded by one author; and another by another writer; and the omission of specifying the whole in right.

38. Property gained on the joint stock is divided.

38. Therefore the maxim is, 'divide wealth acquired with the use of the 'common stock:' and particular terms, as the gains of valour &c., are inserted in the texts as instances.

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Classes of mixed origin] The *Ratnakara* &c Srikrishna and Achyuta.

The alleged precept has no pertinence.] The precept alleged by the opponent must run thus, 'divide what is gained by an unseparated coheir, other than the several specified sorts acquired by valour and so forth without use of joint funds' But that has no pertinence. It has no such object as required a precept to reach it. The reason is stated · "Since there is none other" that is, since there is no case which was not provided for by reasoning. The partition of wealth gained by the use of joint stock, being deducible from reasoning, was not a case unprovided for. Srikrishna.

37. *A case or two may be assumed.*] A treasure, found by an unseparated coparcener, is one instance, and the receipt of anything given by a stranger, through commiseration, occurs as another. Since a partition of these gains is not deducible from reasoning, for they were not obtained by the use of joint property, how can it be said, that the precept has no pertinence? The author proposes this doubt. Srikrishna.

Idle as the prattle of children.] If it be severally declared 'divide wealth other than the gains of science;' 'divide acquisitions other than particular specified sorts,' so as to distinguish what is liable to partition. Consequently, since it does not determine the proposed question whether a partition of such property shall or shall not take place, it is unmeaning and therefore similar to the prattle of children. Srikrishna.

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* Achyuta. † Srikrishna. ‡ Srikrishna.

39. Hence the declaring of property common, merely because it was gained by an unseparated coparcener, is not grounded on authority.

39. Not any property acquired before separation.

40. Besides the text of Yajnyavalkya ("Nor shall he who recovers hereditary property &c." §33) is acknowledged by you likewise, signifying, that, if one recover the property of the father, grandfather, or other ancestor, which has been taken away by any person, it appertains to him alone, not to the rest. Thus, [the author] denying the right of unseparated coheirs in the property, because it has been recovered, although a trace of the former right exist, denies the remoter title of the rest to wealth originally gained by the man himself.

40 A passage of Yajnya valkya explained.

41. It has been said by Srikara, 'If wealth, acquired without using the patrimony, belong exclusively to the acquirer, then effects, received in a present, can never be shared with another brother; for the receipt of a present cannot be attended with expenditure of paternal wealth. It is indeed alleged, that valuables are employed, at the receipt of gifts, for the gratification of the donor; as a heifer or the like in the purchase of sacrificial materials; or as milk for the support of life, during the sacrifice denominated *Jyotishtoma*. Here the valuables are not employed for the gratification of the giver, since his gratification, by receipt of other effects, is not requisite for a donation, the intention of which is spiritual; and, as the act of receiving is momentary, nourishment for the person, who accepts the present, is not requisite, as it is during the tedious celebration of the *Jyotishtoma*, for him who by that ceremony seeks celestial bliss.'

41. Srikara's opinion.

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40. *Denying*.] If the reading be *niracurrat* (in the neuter,) the text of Yajnyavalkya is the agent in the sentence. But, if *niracurran* (in the masculine,) Yajnyavalkya himself is so. Maheswara.

Unseparated coheirs.] For the text, containing no restriction, relates to coheirs whether separated or not separated. Srikrishna and Achyuta.

For, since the construction of the text is 'He shall not give up at the time of partition, that which he recovers;' unseparated coheirs are of course inferred, from its being understood to precede partition. Chudamani.

Originally.] With no trace of a former right. Srikrishna and Maheshwara.

41. *As the heifer or the like.*] A heifer, one year old, is directed by rituals to be given for the purchase of the *Soma* or moon plant (*Asclepias acida*) required for a sacrifice at which the juice of that plant is drunk

42. Refuted.

42. That is futile: for instances often do occur, in the world, of expenditure of wealth, by giving presents to induce a donation; and, in the present age, wealth received in gifts is similar to that which is earned by service. Accordingly it is said, "In the *Kali* age, [gifts are made] to a follower."

43. His reply answered.

43 And as for what is alleged [by the same author] that gratification is no cause of receipt of presents, having no such operation, since long attendance is the cause; and wealth, therefore, is not the occasion of such receipt through the medium of gratification;' that is still more futile: for long attendance and the rest become causes of the receipt of presents, through the medium of gratification; and, according to the diversity of men's dispositions, [gratification*] is seen to arise, in the mind of one, from pecuniary gifts; of another, from long attendance of the like; of some, from the mere evincing of particular qualities. If the effect be not produced, for want of an attendant circumstance, it must not be thence concluded to be no cause; since, as is observed accordingly, gratification is produced by means which are not invariable.

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As milk during the Jyotishtoma.] A *Brahamana* is allowed to drink milk during the celebration of the *Jyotishtoma*, which lasts five days. This sacrifice is performed, by followers of the *Vedas*, for the specific reward of happiness in heaven.

42. *Expenditure of wealth by giving presents*] By presenting agreeable things &c. or, if the reading be *upadana* (instead of *upahara*,) by giving bribes &c. Srikrishna

Wealth received in gifts is similar to that earned by service] Since a donation is obtained by long attendance, the expenditure of wealth is sometimes requisite for the support of life. Srikrishna.

A follower.] One constant in attendance, an earnest solicitor. This is connected with the terms 'gifts are made,' for it is said "In the first age, gifts are made by going to seek an accepter; in the second, they are presented to one invited for the purpose; in the third, to one who solicits them, in the fourth to a constant follower." Srikrishna

43. *Since long attendance is the cause.*] Since presents are also seen to be obtained by long attendance, gratification does not operate towards the receipt of presents; and consequently is not the cause. Srikrishna

Through the medium of gratification.] Only through that medium; not by their own independent power. Therefore gratification is not inoperative. Srikrishna.

If the effect be not produced &c] The particular disposition of the person is a concomitant circumstance If the proper disposition be wanting, gratification is no produced. There is consequently no inoperativeness of it as a cause. But some say, this is an answer to the

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* Srikrishna and Maheswara.

44. It has been further urged [by the same author,] 'If [it be alleged,] that wealth mediately accomplishes the receipt of presents, being employed during attendance; since receipt cannot take place without contiguity; nor can this be without nourishment: that is denied; for nourishment, used for the support of life, previous to the celebration of a *Jyotishtama* or other religious ceremony, would mediately serve for that ceremony, since the *Jyotishtama* could not take place without previous support of life: all food would, therefore, be intended for religious ends, not for human purposes: and consequently wealth, which supplies it, would be designed for sacrificial uses; and the means of acquiring it would also be meant for the same end; and thus the maxim, that the acquisition of wealth, wealth itself, and food, are adapted to human purposes, would be contradicted.' **44. His further arguments.**

45. That is most futile, for, although it mediately contribute to the celebration of the *Jyotishtama*, food obviously serves the immediate purpose of satisfying hunger; and being designed for human uses, it contributes to religious ends; but there is no proof of its being intended for such ends; nor does its so contributing operate towards such a result. How then should it follow, that acquisition of wealth, wealth, itself, and food, are adapted to religious purposes? **45. Repelled.**

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question, how can gratification be a cause of receipt of presents, since, in some instance, no present is obtained, though gratification be produced? Srikrishna.

By means which are not invariable.] It is effected by various means, which are independent of each other. Srikrishna.

44. *If it be alleged.*] In some copies of the text, 'if' (*yadi*) is found; and that reading is right. In other copies it is omitted; but must be supplied. Maheswara.

45. *There is no proof of its being intended for such ends.*] Of its being meant for such purposes, of its being designed for sacrifices. Srikrishna.

For there is no proof of food being intended for such ends; that is, for sacrifices. Maheswara.

No proof of the acquisition of wealth being intended for such ends; that is, for sacrificial uses. Achyuta.

The commentator proceeds to notice variations in the reading of the text, which do not, however, materially alter the sense.

46. An objection obviated.

46. Hence, [because it was not intended for that purpose, though it contribute to the result,* or for the reason which will be stated,†] there is no room for the reproach, 'If wealth be acknowledged to contribute to the receipt of presents, by means of nourishment previous to such receipt, then, since no acquisition of wealth can be made without nourishment from the time of the receiver's birth, every mode of gain would be accompanied with detriment to the patrimony; and the restriction, "without using the patrimony," (§ 3) would therefore not be inserted.' For, lest the restriction become superfluous, the text is understood to signify employment of wealth other than an expenditure of it adapted to nourishment and similar use.

47. What is expended for necessaries, is no cause of an acquisition.

47. Moreover, and expenditure of wealth for nourishment or other use, must necessarily be made even by a person remaining at home; and such expenditure is not designed for the acquisition of wealth: but its having been actually intended for that purpose is requisite [to its being the cause of the gain:‡] consequently the supposition does not go too far.

48. Viswarupa's opinion is consonant to this.

48. Accordingly [since its being actually intended for purpose is positively required; its merely contributing to that end is not sufficient;§] Visvarupa has said, 'When wealth is not acquired by giving [or using] paternal property, it is declared [by the sages‖] not to be common, any more than wealth received on account of marriage: it

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46. *Hence.*] Because it was not intended for that purpose, though it contribute towards it. But some interpret "hence" for the reason subsequently stated, that is, lest the restriction become superfluous &c. Srikrishna.

Achyuta is the author who so interprets it. Chudamani gives the other explaination.

The text is understood to signify.] Maheswara remarks with disapprobation a different reading, (*vachanart' hatwat* for *vachanart' hatwam;*) from which, however, by supplying a sentence, he deduces the same meaning.

47. *The supposition does not go too far.*] There is not ground for supposing, that wealth, expended for nourishment, is the cause of an acquisition. Maheswara

48. *Not acquired by giving paternal property.*] It is thus expressly declared, that the expenditure must have been actually intended for that purpose. Srikrishna.

* Chudamani and Srikrishna. † Achyuta and Maheswara.
‡ Maheswara. § Srikrishna, &c. ‖ Maheswara.

becomes not common, merely because property may have been used for food or other necessaries; since that is similar to the sucking of the [mother's] breast.'

49. Hence, [because its being actually intended for that purpose is a requisite to its being the cause of the acquisition,*] though much wealth, belonging to the father, have been expended in festivity at the son's initiation, or at his wedding, what is obtained by him in alms during his austerities as a student, or received on account of his marriage, is not common; for that expenditure of wealth was not made with a view to gain.

49. So other expenditures without a view to gain.

50. It is, therefore, demonstrated, that welth, acquired by means of joint stock used for the express purpose of gain, is common property; and no other is so.

50. The purpose must have been gain, to render the acquisition common.

51. The same import may be deduced by abridging the substance of what has been expressed, after various disquisitions, by Jitendriya, who says, 'Whatever is acquired on separate funds is several property For the sake of perspicuity, [gains of science and other particular sorts†] are specified by way of example, in these and other words, "Wealth, however, acquired by learning, belongs exclusively to him who acquired it."‡ Such sorts of property are exempted from partition, because they are separate: but even these sorts of wealth become common, if there be a sufficient cause of a joint right. This also has, for the sake of ready comprehension, been in certain instances described [in the writings of sages§] by the circumstance of joint stock used; in others, by that of united exertion made; in some, by that of common relation'

51. The same result from Jitendriya's arguments.

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49. *But even these sorts of wealth become common.*] Such sorts of wealth, being gained by science, valour, or the like, are joint property, if attended with a sufficient cause of a joint right. Though the wealth be of such sort, it is common property. Srikrishna.

By the circumstance of joint stock used.] For example, 'The brethren participate &c.' (Vyasa). Vide § 14.

By that of united exertion made] As in the text, 'If all of them, being learned, &c.' (Manu, 9. 205.)

By that of common relation] For instance, 'After the death of the father and mother,' (Manu, 9. 104.) Vide C. 1. Sect 1 § 14.

And thus, if any thing be given to one, expressly in consideration of his being the son of a person named, all the sons of that person are entitled to partake. Srikrishna and Achyuta.

* Maheswara. † Srikrishna. ‡ Manu, 9. 206. Vide § 9. § Achyuta.

52. Baloka indicates a like opinion.

52. It has been, likewise, said by Baloka, 'The rest cannot have a right to wealth gained by one brother through science, or similar means; [being acquired without use of joint funds, and independently of the exertions of the rest:*] since there is no argument for it.'

53. The practice of dividing all presents accounted for.

53. The practice of dividing wealth gained by receipt of presents without expenditure of joint property, which is observed to prevail among virtuous people, is not unsuitable whether founded on the mutual affection of the brethren, or on a manly sentiment. Or [it may be thus accounted for:] people, observing the partition of wealth received in presents, (for presents are in general gains of science; and, as such, the participation of coheirs equal or more learned is ordained by a passage of law, though the property have been acquired without use of joint funds;) and not knowing, that this partition of the gains of learning is made under a special rule respecting science, but erroneously supposing the partition to take effect because the wealth was gained by an unseparated coheir, have done so of their own accord It is not, however, founded on uniform practice. There is consequently nothing incongruous.

54. A text of Manu expounded.

54. But, as for the text of Manu, ("After the death of the father, if the eldest brother acquired any wealth, a share of that belongs to the younger brothers; provided they have duly cultivated science"†) the meaning of it is this; under another text, placing the eldest and younger brothers in the relation of father and son, ("As a father should protect his sons, so should the firstborn cherish his younger brothers; and they should behave to their elder brother, like children to their father, conformably with their duty respectively"‡) the younger brothers have a title in the wealth of the eldest, though obtained without use of joint stock, as they have in their father's acquisitions. But there is this differenee: that even the unlearned sons are entitled to their father's acquired property; but the learned brothers only have a right to participate in the wealth gained by the eldest.

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54. *If the eldest brother acquire any wealth.*] If he alone acquire it by his labour, with a separate stock. Srikrishna.

Placing brother in the relation of father and son.] After the death of the father; for the text occurs under that head

Younger brothers have a title in the wealth of the eldest.] Not in that which is acquired by the middlemost Srikrishna.

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* Srikrishna.' † Manu, 9, 204. ‡ Manu, 9, 108.

55. This interpretation is right; for the terms of the text would else become unmeaning: expressing 'after the death of the father' 'if the eldest brother &c.' 'provided they have duly cultivated science.' 55. Confirmation of that exposition.

56. Consequently it was an inaccurate assertion, that another unseparated brother participates on the sole ground of the acquisition being made by an unseparated coheir. 56. Conclusion. Gains are not shared on the simple ground of parcenery.

SECTION II.

Definitions of the various sorts of acquisitions &c. exempt from partition.

1. Gains of science described by Katyayana.

1. On this [occasion, or among topics hinted,*] the gains of science are explained. Upon that subject Katyayana says, "What is gained by the solution [of a difficulty], after "a prize has been offered, must be considered as acquired through science, and is not included in partition [among coheirs] What has been obtained from a pupil, or by officiating as a priest, or for [answering] a question, or for determining a doubtful point, or through display of knowledge, or by [success in] disputation, or for superior [skill in] reading, the sages have declared to be the gains of science and not subject to distribution. The same rule likewise prevails in the arts; for the excess above th price

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55. *For the terms of the text would else become unmeaning.*] They would be superfluous, if the younger brothers had a right, simply as such, to the gains of the eldest generally Srikrishna.

After the death of the father.] Hence it appears, that the younger brothers do not participate in the separate acquisitions of the eldest, made while the father was living Srikrishna

1. *On this.*] Among those sorts of partible property If the reading be *atra*, "here" instead of *tatra* "there," the sense is, 'in this opportunity,' Srikrishna.

[of the common goods], and that which is gained through skill by winning from another a stake at play, must be considered as acquired by science, and liable to partition. So Vrihaspati has ordained."

2. First sort. A prize for the solution of a difficulty.

2. 'If you solve this well, I will give you so much money:' after such an offer, if one solve the difficulty and obtain the prize, it is not subject to distribution.

3 Second sort. Fee for instructing a pupil.

3. From a pupil.] From a person instructed by the acquirer.

4. Third sort. Fee for officiating at religious rites.

4. By officiating as a priest.] Received as a fee or gratuity from a person employing him to officiate at a sacrifice.

5. These are dues, not gratuities.

5. These are fees, not presents; for they are similar to wages or hire.

6. Fourth sort. A reward for solving a question.

6. So, a question relative to science being resolved, if any one, through satisfaction, give any thing which had not been previously offered.

7. Fifth sort A reward for clearing a doubtful point or for deciding a litigated question.

7. Also what is obtained by clearing the doubts of one, by whom an offer has been thus made: "To him, who removes my doubts on the meaning of this passage, I will give this gold." Or [it may signify a fee, such as] the sixth part or the like, received for a correct decision between two litigant parties, who apply for the determination of a dubious and contested point.

8. Sixth sort. A reward for display of science

8. Likewise, what is received in a present or the like for displaying his knowledge in the sacred ordinances and so forth.

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The excess above the price.] Having taken gold or the like belonging to the joint stock, and having made bracelets or similar things. the value, which is thus superadded by the skill of the artist to the price of the gold, &c., is an acquisition made through science Srikrishna.

By winning a stake at play.] A wager, previously staked, which is won by superior skill in play. Srikrishna.

5. *These are fees.*] To obviate the seeming tautology in the subsequently mention of a present obtained through the display of learning, after noticing a reward for resolving well a difficult question; the author says 'it is a fee, not a present.' It is not obtained by the mere acceptance of a gift. Srikrishna.

6. *A questions relative to science being resolved.*] A proper answer having been given to a question proposed.

9. So, in a contest between two persons respecting their knowledge of sacred ordinances, or in any other controversy whatsoever concerning the respective attainments, what is gained by surpassing the opponent.

9. Seventh sort. A prize gained or stake won in a disputation.

10. Likewise, where a single article is to be given, and there are many competitors, what is received for reading in a superior manner.

10. Eighth sort. A prize for reading

11. Also, what is gained by painters, goldsmiths and other artists, through skill in the arts and so forth.

11. Ninth sort. The gain of a skilful artist.

12. In like manner, what is won by beating another at play.

12. Tenth sort. A stake won by skill in aply.

13. All this is exempt from being shared with the rest of the coparceners. The meaning is as follows: whatever is acquired by any [skill or] science, belongs to the acquirer, not to the rest. For illustration only, it has been stated at large by Katyayana, to obviate the error of Srikara and others.

13. They are in general exempt from partition.

14. Hence, [since it is enumerated by Katyayana among the gains of science ;*] what is obtained in a present by displaying and making known his own knowledge, is also an acquisition made by science: for a present is given to a learned man on account of his learning.

14. So is any present to a learned man.

15. So Yama: "A man endowed with science, regular in [the performance of his] duties, contented, patient, with subdued passions, of strict veracity, grateful, disinsterested, kind to cows, careful of them, generous, a performer of sacrifices, and a priest, the sage pronounce to be a worthy object. But a present should not be conferred on such as neglect rigid observances, or are ignorant of holy texts, or merely live by their class: for a stone transports not a stone [over the stream]."

15. Yama describes a person worthy of gift.

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9. *Gained by surpassing the opponent*.] Received on terminating the contest by demonstrating the proposition having been previously staked by the disputant, or being generously given by the king. Srikrishna.

13. *For illustration.*] For an example of wealth gained by science without use of joint funds. Srikrishna and Achyuta.

The error of Srikara *and others*.] Their mistake in supposing an acquisition to be subject to partition simply because it was obtained by an unseparated coparcener. Srikrishna.

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* Srikrishna and Achyuta.

16. The present is given on account of learning.

16. For, it is in right of his learning, that he is a fit object of gifts; and unlearned men are unworthy objects.

17. A different construction refuted.

17. Hence, what has been alleged by some one, that the gains of science signify such gifts [only †] as are received on account of teaching; must be rejected as having been said for want of seeing the text above cited: and because the word science (*vidya*) being derived from the root *vid* to know, signifies any knowledge [or skill.]

18. Srikara's objection replied.

18. As for what is objected by Srikara, that 'by pronouncing wealth received in presents to be the earning of science, receipt of presents, instruction of pupils, and assistance in sacrifice, are confounded:' that is very futile since, although presents and the rewards of teaching and assisting at sacrifices, and the other particular sorts, be connected as being equally gains of science; yet the several sorts are not confounded: for still the rewards of teaching and of sacrificing are not presents; and it is an uncontested truth, that a black bull, a red or a pied one, or other individuals, though equally bulls, are not confounded.

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17. *For want of seeing the text above cited.*] Meaning the text of Katyayana, (§ 1.) Srikrishna

It must be rejected as inconsistent with the sense of the above cited text of Yama, (§ 15.) Maheswara.

This commentator appears to have read *vachanarthadarsanat* 'from seeing the purport of the text,' in place of *vachanadarsanat* 'for want of seeing the text.'

18. *By pronouncing wealth received in presents to be the earning of science.*] Srikara's meaning is that, if the fee for assistance in sacrificing be a gain made through science, because it is by science that the man was fitted for officiating; and if the reward of teaching and the receipt of presents be so likewise; then all three, being the gains of science, are confounded. Srikrishna.

A black bull.] *Nila*, the term here used, signifies blue, and is frequently employed in the sense of black: but the sort of bull intended by that term, in the selection of a steer to be consecrated and let loose at obsequies and on certain other occasions, is one of a red colour, with brown head and tail, and with white hoofs and horns

A red one.] *Capila*. When applied to a cow, this term signifies one of the colour of lacdic, with black tail and white hoofs.

† Srikrishna.

19. His argument refuted.

19. Accordingly, [as they are not confounded,* or because things generically similar are specifically different ;† therefore,] since [it may be asked] 'how does the sage, by pronouncing what is received from a pupil or for officiating as a priest to be the earning of science, fail in discriminating the rewards of teaching and of sacrificing ?' the allegation [of their being confounded,‡] merely by way of offering an objection, must be rejected.

20. Gains of valour described by Katyayana.

20. Katyayana propounds the gains of valour &c. "When [a soldier] performs a gallant action, despising danger; and favour is shown to him by his lord pleased with that action, whatever property is then received by him, shall be considered as gained by valour. That and what is taken under a standard, are declared not to be subject to distribution. What is seized [by a soldier] in war, after risking his life for his lord and routing the forces of the enemy, is named spoil taken under a standard."

21. Nuptial presents explained by the same author.

21. "But wealth received on account of marriage is considered to be that which has been accepted with a wife."

22. Exposition of the text.

22. The meaning is, received at the time of accepting a bride.

23. Other sorts, not liable to partition, enumerated by Manu and Vishnu.

23. So Manu and Vishnu state other sorts of property exempt from partition "Clothes, vehicles, ornaments, prepared food, water, women, and furniture for repose or for meals, are declared not liable to distribution."§

24. Explanation of the passage.

24. Clothes] Personal apparel and raiment intended to be worn at assemblies.

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22 *Received at the time of accepting a bride.*] This is indefinite: for the same must be likewise understood of other property received in consequence of becoming a son-in-law. Srikrishna.

24. *Suited to use.*] Adapted to employment. As much should be taken by each person as will supply his wants. There is not, in this instance, a restriction of equal shares. Srikrishna.

Other than female slaves] Since the partition of a female slave is directed by Vrihaspati, ("A single female slave should be employed in labour, in the houses of the several coheirs successively &c."†] the author says, 'other than female slaves.' Srikrishna.

Female slaves] Meaning women kept for enjoyment. Maheswara.

Accordingly Gautama says. "No partition is allowed in the case of women connected [with one of the parceners "¶] Achyuta.

* Achyuta. † Srikrishna ‡ Srikrishna
§ Manu, 9, 219. But not found in Vishnu's institutes. || Vide C. 1, § 10
¶ Vide *Mitakshara*, C. 1, Sect. 4 § 22.

Vehicles.] Carriages or horses and the like.

Ornaments.] Ring and so forth.

Prepared food.] Sweetmeats &c.

Water.] Contained in a pond or well; as suited to use.

Women.] Other than female slaves.

Furniture for repose or for meals] Beds, and vessels used for eating and slipping [or drinking] and similar purposes

25. Vyasa enumerates exempted articles.

25. So Vyasa: "A place of sacrifice a field, a vehicle, dressed food, water and women, are not divisible among kinsmen, though [transmitted] for a thousand generations."

26. Interpretation of the text.

26. A place of sacrifice.] The spot, where sacrifices are performed; or else an idol; not wealth obtained by sacrificing; for that has been noticed as being the earning of science.

27. Katyayana specifies other exempted articles

27. Thus Katyayana: "The path for cows, the carriage road, clothes, and anything which is worn on the body, should not be divided; nor what is requisite for use, or intended for arts: so Vrihaspati declares."

28. Meaning of the passage.

28. Requisite for use.] What is fit for each person's use; as books and the like in study of the *Vedas* &c. That shall not be shared by ignorant brethren. So what is adapted to the arts, belongs to artists; not to persons ignorant of the particular art.

29. Sankha and Likhita exempt certain article.

29. Also Sankha and Likhita: "No division of a dwelling takes place; nor water pots, ornaments, and things not of general use, nor of women, clothes, and channels for draining water. Prajapati has so ordained."

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Furniture for repose &c.] The words are *yogakshema pracharancha.* The *Ratnakara* expounds *yogakshema* the counsellor and priest; and *prachara* the path for cows and other cattle &c. Achyuta.

These terms are otherwise explained in the *Mitakshara.* C. 1. Sect. 4. § 23.

28. *As books &c.*] If there be other effects of equal value with the books, these shall be retained by the learned brethren; and other chattels shall be taken by the illiterate coheirs This must be inferred. Else, if the hereditary property consist in books only, the illiterate heirs might be deprived of subsistence, if they had no right of participation. Srikrishna.

29 *Things not of general use.*] As books for illiterate persons and so forth. Srikrishna.

30. A house, garden or the like, which one of the coheirs had constructed within the site of the dwelling place, during the father's life time, remains his indivisible property : for his father has assented by not forbidding the construction of it. 30. Explanation of the text.

31. So, even property inherited from the paternal grandfather, which has long been lost, and is not recovered by the rest through inability or through aversion from [the efforts requisite for its] recovery, belongs exclusively to the father, if recovered by him on his own funds, and by his own labour ; and is not common property. 31. Hereditary property recovered is in certain cases exempt.

32. Thus Manu ordain : "If a father recover the property of his father, which remained unrecovered, he shall not, against his will, share it with sons, since in fact it was acquired by himself."* 32. As declared by Manu. Such property belongs to the person recovering it.

33. Property appertaining to his father, not recovered by the sons ; not retrieved by them. The other readings, *anavapya* and *anavapyam* [in the place of *anavaptam*,] are unfounded 33. Explanation of the text.

34. Vrihaspati say, "Over the grandfather's property, which has been seized [by strangers] and is recovered by the father through his own ability, and over [any thing] gained by him through science, valour or the like, the father's full dominion is ordained He may give it away at his pleasure, or he may defray his consumption with such wealth ; but, on failure of him, the sons are pronounced entitled to equal shares" 34. Vrihaspati declares property gained or recovered exempt from partition : but after the demise of the acquirer, it is equally divided.

ANNOTATIONS.

Channels for draining waters.] Raghunandana reads *apam pracharara-thyanam*, 'water, vessels and roads,' in place of *apam prachara-rthanam*, 'channels for draining water.'

33. *The other readings are unfounded.*] For, according to one reading, something must be understood, and according to the other, a term must be taken in a secondary acceptation. Srikrishna.

34. *Equal shares.*] The specifying of equal shares forbids the deduction of a twentieth part for the eldest Chudamani and Srikrishna.

He may defray his consumption with such wealth.] All the copies, which have been collated, agree in reading *bhogan chaiva tato dhanat* 'he may defray his consumption with that wealth.' But, in every other complition, as the *Ratnakara*, *Smritichandrika*, *Kalpataru*, *&c.* the reading is *bhagan* instead of *bhogan* : 'He may make a distribution of such wealth.'

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* Manu, 9, 209.

35. Exposition of the text.

35. Through his own ability] The author thus indicates a separate personal exertion

36. And of the preceding passage (§ 32.)

36. In both texts, the term "father" is indefinite : for a reason [of the precept] is stated, "since in fact it was acquired by himself" (§ 32)

37. The rule is the same in regard to property recovered and acquired. Except land.

37. Thus the rule must be understood in the instance of any such hereditary property, other than land, exactly as in the case of property not hereditary, but acquired by the man himself

38. Sankha provides a rule for one case of land.

38 Sankha propounds a special rule regarding land. Land, inherited in regular succession, but which has been formerly lost, and which a single [heir] shall recover solely by his own labour, the rest may divide according to their due allotments, having first given him a fourth part."

39. The acquirer has a fourth part in addition to his own regular share.

39. By the term "solely" the author intimates, that neither common funds were used nor joint personal exertions made. Still it does not become the separate property of the person retrieved it ; but a fourth part of the land recovered must be given to him in addition [to his regular allotment :] by force of the word land, and because there is no reason for supposing it to be vague.

40. Consumption.

40. Thus have been explained both what is divisible and what is exempt from partition.

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39 *In addition*] The meaning of the text is, 'having given a fourth part of the land in addition, to the person who recovered it, all the coheirs, together with him, shall take equal shares.' It is not understood from the term 'the rest,' that a fourth part only shall be given to him for it would be an unequal rule, since the person, recovering the land, would receive less than his coheir, if there be one or two sharers unconcerned in the recovery. Subodhini.

CHAPTER VII.

On the participation of sons born after a partition.

1 Manu &c. declare, that a son born after partition is heir to his father; or shares with reunited brethren.

1. The share of a son born after the partition of the estate is now declared. On that subject Manu and Narada says, "A son, born after a division, shall alone take the paternal wealth; or he shall participate with such [of the brethren,] as are reunited with the [father"]*

2 Interpretation of the text.

2. If the father, having separated his sons, and having reserved for himself a share according to law, die without being reunited with his sons, then a son, who is born after the partition, shall alone take the father's wealth, and that only shall be his allotment. But, if the father die after reuniting himself with some of his sons, that son shall receive his share from the reunited coheirs.

3. Gautama also pronounces him heir to his father's share.

3. Thus Gautama says: "A son, begotten after partition, takes exclusively the wealth of his father."†

4 Explanation of the passage.

4. He, of whom the conception was subsequent to the division of the estate, is a son begotten after partition; being procreated by a person, who is separated [from coparceners:] for, without conception, there is no procreation. Therefore,

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2. *Having reserved a share according to law.*] It is thus hinted, that, if the father, through ignorance of the law, have made a partition in which he took a very small share for himself, his son afterwards begotten, shall receive a due allotment from the brethren. Srikrishna.

4. *Shall receive his share from his brothers.*] This must be understood where the father remains separate, having reserved for himself what ought to be reserved by him, and having given the residue to his sons. But, if the father be dead, the shares of him and of the brethren must be thrown together, and divided, according to law, by all the brothers. However, Chudamani directs a new partition by mixing the whole of the effects, although the father be living, because the double share, or other allotment reserved by him, was not according to law.
supposed, if a share were previously set apart for the child
[illegible] n, all shall participate
ded there be no son

* Manu, 9, 216. Narada, 13, 43. † Gautama, 28, 27.

if the sons were separated [from the father,] while his wife was pregnant but not known to be so, the son, who is afterwards born [of that pregnancy] shall receive his share from his brothers.

5. The same holds good, if there be more than one such son. A passage of Vrihaspati cited.

5. Not one only, but even many sons, begotten after a partition, shall take exclusively the paternal wealth. Thus Vrihaspati says: "The younger brothers of those, who have made a partition with their father, whether children of the same mother, or of other wives, shall take their father's share. A son, born before partition, has no claim on the paternal wealth; nor one, begotten after it, on that of his brother."

6. And explained.

6. One, born previously to the partition, is not entitled to the paternal estate: nor one begotten by the separated father," to the estate of his brother. So the same author declares: "All the wealth, which is acquired by the father himself, who has made a partition with his sons, goes to the son begotten by him after the partition. Those, born before it are declared to have no right; as in the wealth, so in the debts likewise, and in gifts, pledges and purchases."

Another passage quoted.

7. And explained.

7. Under the term "all," wealth, however considerable, which is acquired by the father, goes to the son begotten by him after partition.

8. Another passage cited.

8. "They have no claims on each other, except for acts of mourning and libations of water."

9. And explained.

9. By specifying "Acts of mourning and libations of water" only, the author excludes the remoter pretensions to a participation in wealth.

10. If land &c. have been

10. This is applicable only to the case of wealth acquired by the father. But, if property inherited from the grandfather,

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begotten after partition. But, if the father himself, through apprized of the pregnancy, have given shares to his sons, in virtue of his power as owner; the child in the womb has no right to participate, since their property in these shares is complete: he has a right only to the father's allotment; and, if there be a son begotten after the partition, he is entitled to partake equally with him. Srikrishna.

6. *Which is acquired by himself.*] It is thus intimated, that what is acquired, through personal labour, on separate funds, by the father who is reunited after partition with another son, belongs also to the son begotten after the partition, and not to the reunited parceners. Srikrishna.

10. *Land or the like.*] A corrody and share are intended by the terms "or the like;" for gems, pearls &c. are similar to a man's own acquired wealth. Srikrishna.

as land or the like, had been divided, he may take a share of such property from his brothers: for partition of it is authorized, [only] when the mother becomes incapable of bearing more children. [Consequently, since the partition is illegal, having been made in other circumstances, it ought to be annulled.*]

divided, the son subsequently born takes nevertheless a share.

11. That is declared by Vishnu: "Sons, with whom the father has made a partition, should give a share to the son born after the distribution."†

11. Vishnu authorizes his participation.

12. So Yajnyavalkya: "When the sons have been separated, one, afterwards born of a woman equal in class, shares the distribution. His allotment must positively be made, out of the visible estate corrected for income and expenditure."‡

12. Yajnyavalkya directs an allotment to be given out of the property forthcoming.

13. Since it disagrees with the ordinance, that "he shall alone take the paternal wealth," (§ 1.) it must relate to hereditary property, for the reason above-mentioned.

13. That must relate to hereditary property.

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12. *Must positively*] The particle *va* is affirmative, and what has been consumed, is consequently excepted. Srikrishna, &c.

The particle signifies 'or,' and denotes a regulated alternative. If there be evidence of the income and expenditure, the allotment shall be made, out of the 'visible estate' if not, must be grounded on a reference to the amount originally distributed. Maheswara.

The visible estate.] The wealth forthcoming. Achyuta.

The remainder after allowing for income and expenditure, or that which is forthcoming. Maheswara.

13. *For the reason above-mentioned*] That which was stated, 'because distribution is authorized when the mother becomes incapable &c.' Therefore, whether pregnancy were known or not; the partition being illegal, which has been made, of the grandfather's estate, without the mother's being incapable of bearing more children, it ought to be annulled, and the two last cited passages will relate to the distribution of such property: but the preceding texts of Manu and the rest regard the father's own acquired wealth. The contrary must not be supposed. Srikrishna.

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* Srikrishna.

† Vishnu, 17, 3.

‡ Yajnyavalkya, 2, 123.

CHAPTER VIII.

On the allotment of a share to a coparcener returning from abroad.

1. The share of an absent coparcener is directed by Vrihaspati to be delivered to be him.

1. The participation of one, who arrives after the distribution of the estate, is next declared. On this subject Vrihaspati says, "Whether partition have, or have not, been made; whenever an heir appears, he shall receive a share of whatever common property there is. Be it debt, or a writing, or house, or field, which descended from his paternal ancester, he shall take his due share of it, when he comes, even though he have been long absent."

2. Or to his heirs,

2. "If a man leave the common family, and reside in another country, his share must no doubt be given to his male descendants when they return. Be the descendant third, or fifth, or even seventh, in degree, he shall receive his hereditary allotment, on proof of his birth and name."

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1. *Whether partition have or have not been made.*] By the rest who remain in the country. So the text must be supplied. Achyuta.

Whatever common property.] Which has descended from his ancestor. Achyuta.

2. *Or even seventh.*] The particle "or" (*va*) connects this with other degrees not mentioned but included within the seventh. Therefore descendants, as far as the seventh in degree returning from a foreign country, participate: not so the eighth or other remoter descendant. Accordingly, the text, which expresses, that "The right to participation ceases with the seventh person" relates to the subject. Srikrishna.

Be he the third, or fifth, or even seventh.] The particle "or" is here employed in an indefinite sense. If therefore, at the time of the demise of the ancestor and owner, a descendant, within the degree of great-grandson, be the eldest of the male issue living; then, since the property devolves in regular succession on the progeny, the descendant, even beyond the seventh degree, may have a good title. But, if the eldest of the [surviving] male issue be the son of the great-grandson; then, since he is destitute of title, being debarred from offering a funeral oblation, his son, though fifth in descent, has not the right of succession. Achyuta.

3. On proof of his descent. 3. "To the lineal descendants, when they appear, of that man, whom the neighbours and old inhabitants know by tradition to be the proprietor, the land must be surrendered by his kinsmen."

4. Such proof is necessary. 4. Under this text; the heir [of a coparcener] long absent shall take his due allotment, after making himself known to the old inhabitants settled on all sides.

5. Conclusion. 5. Such is the participation of one arriving after a division.

CHAPTER IX.

This chapter treats of the participation of sons by wives of different castes It is omitted as it simply repeats the difference in shares of such sons on the authority of texts, which allowed a person to marry wives of different castes, which have become obsolete. It is remarkable however that even the Dayabhaga treats of the subject and thus considers mixed marriages legal by implication. Ed.

ANNOTATIONS.

The foregoing is cited, without mention of the author's name by Srikrishna, who replies, 'That is not right, for were it so, there would be no difference in the cases of one who remained at home and of one who went abroad; and the text would consequently be superfluous. Accordingly a separate revelation must be presumed as the ground of that text. This should be considered by the wise.'

The close of Srikrishna's reply bears allusion to the sequel of Achyuta's argument, in which it is said, 'As for the supposition, that the rights of third, fifth &c. are determined according to the greater or less distance of the place, but, since the succession is ordained to extend as far as the seventh in degree, it extends no further; and accordingly another passage of law expresses, that inheritance stops beyond the seventh in descent. That is wrong, for it would be necessary to assume another foundation of it [in scripture,] and the rule would be irrelevant, since no determination could be formed, as there is no ground for selection of particular distances.'

CHAPTER X.

On the participation of sons by adoption.

1. Partition between a legitimate son and an appointed daughter.

1. If a true legitimate son be born after the appointment of a daughter to raise up issue, the distribution to be made between them is here propounded.

2. They share equally according to Manu.

2. In such a case, the appointed daughter and the legitimate son take equal shares: nor is the appointed daughter entitled to a deduction of twentieth part in right of seniority. So Manu declares: "A daughter having been appointed, if a son be afterwards born, the division of the heritage must, in that case, be equal: since there is no right of primogeniture for the woman."* For the appointed daughter does not herself perform the functions of an eldest son; but, though her son, presents funeral oblations: as is hinted by Manu: "He, who has no son, may appoint his daughter in this manner to raise up a son for him: saying, the child which shall be born of her, shall be mine for the purpose of performing my obsequies."†

Her appointment described in another passage of Manu.

3. Her son is considered as a son's son.

3. It must not be supposed, that, if the appointed daughter first bear a son, and a legitimate son of her father be aftewards born, her son should have the allotment of an eldest son: for he is considered as a son's son. Manu intimates as much, saying, "By that male child, whom a daughter, whether formally appointed or not, shall produce from a husband of an equal class, the maternal grandfather becomes grandsire of a son's son: let that son give the funeral oblation and possess the inheritance"‡ For the appointed daughter is as it were a son *(putra)*, and her son is deemed a son's son *(pautra)*, and her father, to whom he thus appertains, becomes grandsire of a son's son. Now there has not been any mention of a peculiar allotment in right of primogeniture for the son's son.

4. He is figuratively called son in a passage of Vasishtha.

4. As for the text of Vasistha, which declares the son of an appointed daughter to be an adopted son: ("This

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4. *One actually is such, and the other is so by his means.*] Since both are givers of the funeral oblation, the terms 'figuratively a son'

* Manu, 9, 134. † Manu, 9, 127. ‡ Manu, 9, 136.

damsel, who has no brother, I will give unto thee, decked with ornaments; the son, who may be born of her, shall be my son."*) whence it appears, that both the appointed daughter and her son are [denominated] son: this designation of him as a son must, (since it contradicts Manu; and since the oblation of a funeral cake is the only quality of a son, which he possesses;) be figurative: for, through him, the appointed daughter, offers the funeral oblation; and thus one actually is such, and the other is so by his means.

5. The distribution before-mentioned must be understood in the case where the legitimate son and the appointed daughter are of the same tribe: but, if they be of dissimilar classes, a distribution between them must be made as between legitimate sons appertaining to different classes: for the true son and the appointed daughter are equal.

5. This is restricted to equal class. Else the true son has the allotment of his tribe.

6. But, if a daughter, being actually appointed, become a widow without having borne a son, or if she be ascertained to be barren, she has not, in that case a right to her father's wealth: since the appointment was made for the sake of a son, who may perform obsequies; and, on failure of that, she is similar to any other daughter.

6. If she be barren or a widow, the appointment gives no right.

7. In a partition among sons of the wife and the rest with a true legitimate son, such of them, as are of the same class with the [adoptive] father and superior by tribe to the true son, whether they be sons of an appointed daughter, or issue of the wife, offspring of an unmarried damsel, or secretly produced, or abandoned [by the natural parents,]

7. Other adopted sons, sharing with a true son.

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relates to both. The author declares the mode of it. One, namely the son of the appointed daughter, actually offers the oblation; the other, or the appointed daughter, does so, through him, that is, through the son of the appointed daughter. Chudamani.

One.] The son of the appointed daughter. *The other.*] The appointed daughter considered as a son. If the reading be *(feminine instead of masculine) anyasyah* for *anyasya*, the sense is, 'another, namely the appointed daughter.' Achyuta

One actually.] The true legitimate son is of course, in right of his birth, a son. *The other.*] The son of the appointed daughter. *By these means.*] By prosecuting a funeral oblation like a son. Maheswara.

6. *She is similar to any other daughter.*] It is thus intimated, that, as in the case of a barren daughter, who was not appointed, the next heirs take the inheritance; so they do, in the instance of such a daughter, who had been appointed. Chudamani and Srikrishna.

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* Vasishtha 17, 18.

or received with a bride, or born of a twice-married woman. or given, or selfgiven, or made, or bought; shall be entitled to the third part of the share of a true son. So

Take a third; according to Devala.

Devala, after having described the twelve sons, expressly declares, "These twelve sons have been propounded for the purpose of offspring: being sons begotten by a man himself, or procreated by another man, or received [for adoption,] or voluntarily given Among these, the first six are heirs of kinsmen, and the other six inherit only from the father: the rank of sons is distinguished in order as enumerated. All these sons are pronounced heirs of a man who has no legitimate issue by himself begotten: but, should a true legitimate son be afterwards born, they have no right of primogeniture. Such, among them, as are of equal class [with the father,] shall have a third part as their allotment· but those of a lower tribe must live dependent on him supplied with food and raiment.

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7. *Superior by tribe to the true son.*] If the true son be issue of a woman of the military or of the commercial class: then, the son of the wife, or other subsidiary son, being born of a *Brahmani*, is superior by tribe. Chudamani.

Son of an appointed daughter.] Since the appointed daughter herself is equal to the true legitimate son she is not included in this enumeration. Chudamani

Begotten by himself.] Issue begotten by a man himself" comprises 1st, the *aurasa*, or true legitimate son, 2d, a *paunarbhava*, or son by a twice-married woman 3d, a *parasava*, or son of a priest by a woman of the servile class, 4th, the *putrika*, or appointed daughter· these are all begotten by the man himself. "Issue procreated by another man" intends the *Kshetraja*, or son of the wife and so forth. 'Sons received for adoption" are 1st *datta*, a son given· 2d, *krita*, one brought; 3d, *sahadha*, the son of a pregnant bride; 4th *kanina*, a son born of an unmarried damsel, 5th, *kritrima*, a son made. "Voluntarily given" signifies presented unsought: comprehending 1st the *apavidha*, or son rejected [by his own parents]; 2nd, *swayamupagata*, one who comes of his own accord, and 3dly *gudhotpanna*, a son secretly produced. Srikrishna and Achyuta

Among these, the first six are heirs.] The first six, from the true legitimate son to the son rejected by his natural parents, are heirs of kinsmen, that is, of uncles and the rest. The others, from the son of a pregnant bride, to the son bought, are heirs of the [adoptive] father alone. Maheswara.

Such among them as are of equal class.] The *Kshetraja* or issue of the wife, being son of a *Brahmana* by a *Brahmani*, is superior by tribe compared with the legitimate issue of a *Vaisya* wife, and belongs to the same class with the [adoptive] father. So, in other instances. Srikrishna.

8. The true legitimate son and the rest, to the number of six, are not only heirs of their father, but also heirs of kinsmen; that is, of *Sapindas* and other relations. The others are successors of their [adoptive] father, but not heirs of collateral relations (*Sapindas* &c.)

8. Six heirs to kinsmen; and six heirs to the adopter.

9. They take the whole estate of a father, who has no legitimate issue by himself begotten: but, if there be a true son, such of them, as are of the same tribe with the father, take a third part.

9. They share with a true son.

10. Since the appointed daughter is equal to the true legitimate son, the same order of distribution must be observed in her case.

10. Also with the appointed daughter.

11. But those [adopted sons,] who are inferior by class to the father, yet superior to his legitimate son shall take the fifth or the sixth part of a legitimate son's share, according to their good qualities, or the want of such qualities.* Thus Manu says: "Let the legitimate sons, when dividing the paternal heritage, give a sixth part, or a fifth, of the patrimony to the son of the wife."†

11. Another allotment stated by Manu.

12. Since all adopted sons are, in Devala's text, (§ 7.) equal to the wife's son, the term *Kshetraja* (son of the wife) is, in Manu's text, indefinite [and comprehends other descriptions of sons.]

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10. *The same order of distribution &c.*] If there be an appointed daughter, ‡ the rest share a third part only. Chudamani.

The same order of distribution, that is, the allotment of a third part, which has been directed for them at a division with the legitimate son, takes effect at a partition with an appointed daughter. For this very reason, the appointed daughter is exhibited first in the enumeration of twelve sorts of sons. Srikrishna.

11. *According to their good qualities &c.*] According as they have good qualities, or are deficient in them. In fact, it is fit, that the adopted son, inferior by class to the father, but belonging to the same tribe with the legitimate son, should have a sixth part: or, if he belong to a superior tribe, a fifth: else, no allotment being specified for one inferior to the father but equal to the legitimate son there would be a deficiency in the provisions of the law. Srikrishna.

12. *Since all are equal*.] For equal allotments are propounded for them. Srikrishna.

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* Srikrishna and Achyuta notice a variation in the reading. (*Gunavadagunataya*, and *Gunavadagunapekshaya*,) which does not, however, make any material difference in the sense.

† Manu, 9, 164.

‡ This commentator appears to have read *putrikayamapi* instead of *putrikayaapi*.

13. Food and raiment allowed, if they are of lower tribes, as directed by Manu; and by Katyayana.

13. But such as are inferior by class to the father, and to their brother, his legitimate son, are entitled only to food and raiment. So Manu declares: "The legitimate son is the sole heir of his father's estate: but, for the sake of pity, he should give a maintenance to the rest."* Thus Katyayana says, "If a legitimate son be born, the rest are pronounced sharers of a third part, provided they belong to the same tribe [with the father;] but, if they be of a different class, they are entitled to food and raiment only."

14. Exposition of the passages.

14. The term "the rest" in the text of Manu, as well as the the phrase "if they be of a different class" in that of Katyayana, signify one of inferior tribe: conformably with the text of Devala (§ 7.)

15. Special case of a true son &c. a son of the wife stated by Manu.

15. Manu states the distribution between a true son, and the issue of the wife produced without due authority. "If there be two sons, a legitimate one, and the son of a wife, claiming the estate of the same person, each shall take the property which belonged to his father; and not the other."†

16. Exposition of the text. A passage of Narada cited.

16. Let each receive the wealth of him, from whose seed he sprung: and let not the other take it, who sprung from the seed of another person. Accordingly Narada says, "If two sons, begotten by two fathers, contend for the wealth of the woman, let each of them take that which was his father's property; and not the others."‡

17. And explained.

17. The wealth, appertaining to the woman, which was given to her by the respective fathers, let the son of each father severally take: and not the other, It would be needless to enlarge.

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13. *Pity*] Commiseration. for the sake of that. Therefore his own choice, not their right, is the motive for giving them a maintenance. Here maintenance signifies a subsistence. Srikrishna.

Sharers of a third part] The *Mitakshara*, with certain other authorities, reads 'a fourth part' See *Mitakshara* on Inheritance, C. 1. Sect. 11. § 25.

17. *The wealth appertaining to the woman.*] The wealth of the woman, in Narada's text, signifies property which has come into her hands [by inheritance.] For, if it were her own peculiar property, they would have equal shares of it. Maheswara

* Manu, 9, 163 † Manu, 9, 162.

‡ Manu, 9, 191, and cited from his institutes by numerous compilers; but referred by Jimutavahana and Raghunandana to Narada. It is not, however, found in the institutes of this author.

CHAPTER XI.

On succession to the estate of one who leaves no male issue.

SECTION I.

On the Widow's right of succession.

1. Is regard [to succession*] to the wealth of a deceased person, who leaves no male issue, authors disagree, in consequence of finding contradictory passage of law.

1. Opinions very as to the order of succession on failure of male issue.

2. Thus Vrihaspati says, "In scripture and in the code of law, as well as in popular practice, a wife is declared by the wise to be half the body of her husband, equally sharing the fruit of pure and impure acts. Of him, whose wife is not deceased, half the body survives. How them should another take his property, while half his person is alive? Let the wife of a deceased man, who left no male issue, take his share, notwithstanding kinsmen, a father, a mother, or uterine brother, be present.† Dying before her husband, a virtuous wife partakes of his consecrated fire: or, if her husband die [before her, she shares] his wealth: this is a primeval law. Having taken his movable and immovable property, the precious and the base metals, the grains liquids and the clothes, let her duly offer his monthly, half-yearly, and other funeral repasts. With presents offered to his manes, and by pious liberality, let her honour the paternal uncle of her husband, his spiritual parents and daughter's sons, the children of his sisters, his maternal uncles, and also ancient and unprotected persons, guests and females [of the family.‡] These dear or distant kinsmen, who become her adversaries, or who injure the woman's property, let the king chastise by inflicting on them the punishment of robbery."

2. Vrihaspati declares the wife to have a preferable title; before parents and collaterals.

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2. *Partaker of his consecrated fire.*] After her decease her body is burnt with fire taken from his consecrated hearth. Maheswara.

* Srikrishna. † Vide infra, § 54. ‡ Vide infra, § 63.

3. The widow succeeds to her husband if there be no sons.

3. By these seven texts Vrihaspati having declared that the whole wealth of a deceased man who had no male issue, as well the immovable as the movable property, the gold and other effects, shall belong to his widow, although there be brothers of the whole blood, paternal uncles, [daughters,†] daughter's sons and others heirs; and having directed, that any of them, who become her competitors for the succession, or who themselves seize the property, shall be punished as robbers; totally denies the right of the father, the brothers and the rest to inherit the estate if a widow remain.

4. She is first in Yajnyavalkya's enumeration.

4. In like manner Yajnyavalkya says, "The wife and the daughters, also both parents, brothers likewise and their sons, gentiles, cognates, and pupil and a fellow student: on failure of the first among these, the next in order is indeed heir to the estate of one, who departed for heaven leaving no male issue. This rule extends to all persons and classes."* Thus affirming the right of the last-mentioned on failure of the preceeding, the sage propounds the succession of the widow in preference to all the other heirs.

5. And first in Vishnu's

5. So Vishnu ordains: "The wealth of him, who leaves no male issue, goes to his wife, on failure of her, it devolves on daughters, if there be none, it belongs to the father; if he be deed, it appertains to the mother; on failure of her, it goes to the brothers; after them, it descends to the brother's son; if none exist, it passes to the kinsmen

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Let her duly offer.] The causative verb is used in the original, with the sense of the simple verb, according to the remark of Chudamani and Srikrishna.

Monthly, half-yearly, &c.] The text is read by Achyuta "yearly, half-yearly' *varsa shan-masikadikam*, and he notices as a variation the other reading, "monthly, half-yearly' *masa shanmasikadikam* Raghunandana on the contrary states the former as a variation, considering the latter as the common reading of the text

3. *By these seven texts.*] The passage above cited comprises seven stanzas.

4. *Leaving no male issue.*] This implies failure of son, son's son, and son of the grandson. For these are equally givers of funeral oblations at periodical obsequies. Ragh. *Dayatatwa.*

5. *Devolves on daughters*] Some copies of Jimutavahana insert a sentence, "if there be none, it descends to daughter's sons." This clause is not noticed by Vishnu's commentator; nor inserted by various compilers, though it be admitted by Raghunandana, who also makes another addition in a subsequent part of the text, respecting the pupil.

* Chudamani.

(*bandhu;*) in their default, it devolves on relations (*sakulya;*) [failing them, it belongs to the pupil,*] on failure of these, it comes to the fellow student: and, for want of all those heirs, the property escheats to the king; excepting the wealth of a *Brahmana*."†

6. The passages above cited do not allot her a mere subsistence.

6. By this text, relating to the order of succession, the right of the widow, to succeed in the first instance, is declared. It must not be alleged, that the mention of the widow is intended merely for the ascertainment of her right to wealth sufficient for her subsistence. For it would be irrational to assume different meanings of the same term used only once, by interpreting the words wealth as signifying the whole estate in respect of brothers and the rest, and not the whole estate in respect of the wife. Therefore, the widow's right must be affirmed to extend to the whole estate.

7. But her husband's share, as in a passage of *Vrihat* Manu.

7. Thus *Vrihat* Manu says, "The widow of a childless man, keeping unsullied her husband's bed, and persevering in religious observances, shall present his funeral oblation and obtain [his] entire share."

8. Exposition of the text.

8. "He" is repeated or understood from the words "his funeral oblation," for that term alludes to her husband. The meaning therefore is, 'the wife shall obtain her

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If there be none, it belongs to the father; if he be dead, it appertains to the mother.] In the text, as it is exhibited in the *Ratnakara*, *Chintamani*, and other compilations, these sentences are transposed: a reading which is confirmed by Achyuta and Srikrishna commenting upon this passage.

If none exist, it passes to kinsmen; in their default, it devolves on relations.] The words *bandhu* and *sakulya*, here translated kinsmen and relations, are read in this order by the scholiast of Vishnu and by the author of the *Kalpataru* and most other authorities. But the terms are transposed in the *Madana-ratna*. Either way, the same order of succession is intended: first the near kindred, *sapindas*, and *sagotras*: and last the remoter kindred.

7. *His entire share.*] In the commentary on Jimutavahana which bears Raghunandana's designation, another reading of the text is noticed: viz., *kritsnam artham* 'the entire estate' instead of *kritsnam ansam* 'the entire share.' That reading is countenanced by the *Ratnakara* and *Chintamani*; and if it be the genuine text, the whole of Jimutavahana's argument in the subsequent paragraphs (to § 13) falls to the ground. But the *Viramitrodaya* and *Smritichandrika* agree with Jimutavahana in the reading of this passage.

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* Vishnu, 17, 4—13. † Ragh, *Dayatatwa*.

husband's entire share;' not 'she shall obtain her own entire share;' for the direction, that 'she shall obtain,' would be impertiment, in respect of her own complete share. Since the intention of the text is to declare a right of property, it ought not to be interpreted as declaring such right in regard to the person's own share; for that is known already from the enunciation of it as that person's share, [and it need not therefore be declared.]

9. A different interpretation refuted.

9. Nor should it be said, that the intention of text is to authorize the taking [or using] of the goods, [not to declare the right of property;*] for the taking or using of one's own property is a matter of course.

10. The text is no injunction.

10. Nor can the text be supposed to intend a positive injunction [that she should take her own share.†] For its purpose would be spiritual; and, if it were an injunction a person who commanded and other particulars [as sin in its omission &c.‡] must be inferred.

11. Nor can it intend the allotment of a share only.

11. It is alleged, that, as in the passage, "let a son, who is neither blind nor otherwise disqualified, take an entire share," [the meaning is, §] not 'his father's entire share' but 'his own complete allotment;' so, in this instance likewise, the terms are [interpreted as ||] relative to the widow's own complete allotment. That is not accurate; for since there is no such passage of law as that stated, the example is impertinent; or admitting that there is, still, since for the reason before-mentioned it would be impertinent as a precept, [the alleged example ¶] will be rightly interpreted as relative to the father's share

12. Authors are not at the pains of declaring a

12. Accordingly [since the scope of the precept cannot be to declare a right of property in a person's own wealth;**] the sages do, in all instances, propound the right of a

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9. *Taking.*] Such taking as consists in disposal at pleasure. Srikrishna.

11. *Relative to the father's share.*] Maheshwara censures this reading, (which is Srikrishna's,) and snbstitutes for *pitrans' apeksham' patyans' apeksham* 'relative to the husband's share.' On this reading, the passage must be translated, 'since for reasons before mentioned it would be impertinent as a precept, [the text § 7] will be rightly interpreted as relative to the husband's share.'

* Srikrishna. † Srikrishna. ‡ Chudamani, Srikrishna, &c.
§ Srikrishna. || Chudamani and Achyuta.
¶ Srikrishna. ** Srikrishna.

different person [as heir,] to the wealth of another [who is his predecessor;] for example, that of sons to the paternal estate; and that of widows and the rest to the goods of a man who leaves no male issue; and so in other cases. They do not needlessly bid a person take his own share.

man's right of property in that which is his own.

13. It is alleged. that by the mention of the relative, the correlative is suggested, and thus, when the word mother is [singly] employed, it is not understood to intend a stranger's mother. This objection is irrelevent; for the maxim is applicable where the correlative is not specified: and thus, when it is said "call Dittha's mother," neither the mother of the messenger, nor of the sender, is supposed to be meant. In like manner, since the correlative is here indicated by the pronoun in the phrase "his funeral oblation," how can [the word share*] refer to the wife? And the incongruity of supposing the text to be an injuuction, has been already shown (§ 10)

13. The text does not intend her share.

14. Therefore, it is demonstrated, that *Vrihat* Manu (§ 7) declares the widow's right of taking his [that is, her husband's †] entire share

14. Conclusion in regard to the interpretation of the passage (§ 7)

15. Passages of various authors, which declare the contrary of the widow's right of succession, are the following. Sankha, Likhta, Paithinasi and Yama say, "The wealth of a man, who departs for heaven, leaving no male issue, goes to his brothers. If there be none, his father and mother take it: or his eldest wife, or a kinsman (*sagotra*), a pupil, or a follow-student."

15. Texts of an apparent contrary import occur: viz. a passage of Sankha, Vrihaspati &c.

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14. *Vrihat* Manu *declares the widow's right of taking her husband's entire share*] On failure of male issue, the widow succeeds to the whole estate, whether joint or several, and consisting of immovables or movables. So Jimutavahana and the rest maintain* However, [Vachespati] Misra holds, that, in the case of separate property, the widow inherits; but, in the instance of undivided wealth, the brothers are heirs, and the widow only shares food and raiment Kasirama on *Dayatatwa.*

15. *Eldest wife.*] In the *Kalpataru* and *Ratnakara* the text is read *patni rajyeshtha* 'a wife not eldest,' that is, according to Chandeswara's interpretation, 'fulfilling some but not all the duties of a faithful widow.' This reading is noticed in Raghunandana's commentary, but with a different interpretation, viz. 'youngest wife.' In the *Viramitrodaya* the text is written *jyeshthara patni*; which removes all ambiguity and confirms the version of Jimutavahana's reading, *rajyeshtha patni.*

* Srikrishna.

† Chudamani, Srikrishna and Maheshwara.

16. Which prefers the brothers and the parents to the wife.

16. Here, in contradiction to the preceding texts, the succession of the father and mother, if there be no brother, or that of the wife, if they be both dead, is propounded.

17. Also a passage of Devala.

17. So Devala ordains "Next let brothers of the whole blood divide the heritage of his who leaves no male issue, or daughters equal [as appertaining to the same tribe*]; or let the father if he survive, or [half †] brothers belonging to the same tribe, or the mother, or the wife, inherit in their order On failure of all these, the nearest of the kinsmen succeed."‡

18. Which places the brothers first and the widow last.

18 Here the contradiction is the brother being placed first of all the heirs, and the widow last.

19. That cannot be reconciled, referring the brother's succession to the case of union, and the wife's to the instance of separation.

19 Some reconcile the contradiction by saying, that the preferable right of the brother supposes him either to be not separated or to be reunited; and the widow's right of succession is relative to the estate of one, who was separated from his coheirs, and not reunited with them.

20. It would contradict Vrihaspati.

20. That is contrary to a passage of Vrihaspati, who says "Among brothers, who become reunited, through mutual affection, after being separated, there is no right of seniority, if partition be again made Should any one of them die, or in any manner depart [by entering into a reli-

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17 *If (dhriyamana) he survive*] Being alive. Ragh *Dayatatwa.* Being capable of the succession This excludes one degraded or otherwise disqualified Srikrishna and Kasinama.

19 *Some reconcile the contradiction by saying*] The doctrine of the *Maithila* school is here stated Maheswara.

20. *His sister also is entitled to a share*] His unmarried sister, whose father is deceased is entitled to take out of her deceased brother's share, a portion or allotment to defray the expense of her marriage. But, if it cannot be defrayed with that, she may likewise take from the surviving brother Maheswara.

If unmarried, she takes a portion sufficient to defray the charges of her nuptials. If a widow, she receives a maintenance. Achyuta.

Some say, that, if she be a widow, receives a maintenance. Srikrishna.

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* Srikrishna and Achyuta. † Chudamani, &c.
‡ Vide infra, § 50, and Sect. 5. § 6.

gious order, *] his portion is not lost, but devolves on his uterine brother His sister also is entitled take a share of it. This law concerns one who leaves no issue, nor wife, nor parent. If any one of the reunited brethren acquire wealth by science, valour, or the like, [with the use of the joint stock,†] two shares of it must be given to him, and the rest shall have each a share "‡

21. Here, since reunion of parceners is specified at the beginning, and at the close, of the text, the intermediate passage, "his share is not lost, but devolves on his uterine brother," must be understood as relating to a reunited parcener. And the author, saying "this law concerns one who leaves no issue, nor wife nor parent," declares the right of a reunited uterine brother as taking effect on failure of son, daughter, widow and parents. How then does [the reunited brother §] bar the widow's title to the succession? **21. Who intimates the wife's preferable right in the instance of reunited brothers.**

22. Besides the text expresses, that "his share is not lost," and the expression is pertinent in regard to unseparated parceners and reunited coheirs, since the lapse of the share might be supposed, because the property, being inter-mixed with another brother's effects, is not seen apart; but the property of a separated coheir being distinctly perceived in a separate state, what room is there for supposing its lapse? Therefore, these texts [of Vrihaspati ‖ vide § 20] relate to reunited coheirs. **22 The text must relate to reunited coheirs.**

23. Moreover, the inference, that the texts of Sankha and others above cited, (§ 15 &c.) which declare the preferable right of the brother before the widow and the rest, relate to a reunited brother, [as well as an unseparated, one, ¶] must be drawn either from the authority of a text of law or from reasoning. Now it is not deducible from a text of law; for there is none which bears that meaning expressly; and the passages, concerning the succession of the reunited parcener Sect. 5 § 13) containing special provisions regarding the brother's succession, cannot intend generally the right of a brother to inherit [to the exclusion of a widow.**] **23. The proposed mode of reconcilling the seeming contradiction (§ 19) is unsupported by positive texts.**

24. Since the texts of Vrihaspati just now cited (§ 20) contradict that inference; for the brother's right is there declared to take effect, in the case of reunion, on failure of son, daughter, widow and parents; brethren not reunited **24. The preceding passages (§ 15 &c.) do not**

* Srikrishna and Achyuta. † Chudamani.
‡ In this passage, as it stands in the *Ratnakara* and other compilations, there are several variations of the reading; but not materially affecting the sense.
§ Maheswara. ‖ Srikrishna ¶ Maheswara.
** Maheswara.

relate to unseparated and reunited coheirs.

must be subject [of those passages of Sankha &c. § 15.] That alone is right; and they do not relate to [unseparated and] reunited brethren.

25. It is equally unsupported by reasoning.

25. But it is said, this inference is deduced from reasoning. Thus, in the instance of reunion, [or in that of a subsisting coparcenery,†] the same goods, which appertain to one brother, belong to another likewise. In such case, when the right of one ceases by his demise, those goods belong exclusively to the survivor, since his ownership is not devested. They do not belong to the widow: for her right ceases on the demise of her husband; in like manner as his property devolves not on her, if son or other [male descendants] be left.

26. For the proposed reasoning is confuted.

26. That argument is futile. It is not true, that, in the instance of reunion [and of a subsisting coparcenery,‡] what belongs to one, appertains also to the other parcener. But the property is referred severally to unascertained portions of the aggregate. Both parceners have not a proprietary right to the whole; for there is no proof to establish their ownership of the whole: as has been before shown [when defining the term partition of heritage §] Nor is there any proof of the position, that the wife's right in her husband's property, accruing to her from her marriage, ceases on his demise. But the cessation of the widow's right of property, if there be male issue, appears only from the law ordaining the succession of male issue.

27. An objection answered.

27. If it be said, that the cessation of her right, in this instance also, does appear from the law which ordains the succession of the reunited parcener the answere is, no, for it is not true that the text relates to reunited parceners: since the law, which declares the brother's right of succession, may relate to reunited brethren, if it be true, that the widow's right of ownership ceases by the demise of her husband who was reunited with his coheirs; and the widow's proprietary right does so cease, provided the law relate to the case of reunited brethren. Thus the propositions reciprocate.

28. A further reason stated.

28. Besides, if the texts of Sankha, Likhita and the rest, (§ 15 &c.) relate to unseparated or reunited parceners, they must be interpreted as signifying, that 'the wealth of one, who is either unseparated or reunited, goes to a brother who is so; or, if there be none such, the two parents take it.' In that case, a question may be proposed, shall parents, who are separated and not reunited, take the heritage? or parents who are either unseparated or reunited? Here the

* Mahcswar † Maheswara, Vide C. I. ‡ Maheswara.

first proposition is not admissible; for how can the claim of parents, who are separated and not reunited, be preferred to the wife's, since they are excluded by her, under the passage before cited? Nor is the second proposition maintainable, for all agree, that a father, being unseparated or reunited, takes the heritage in preference to an unseparated or re-united brother.

29. Moreover, as in the instance of the estate of one, who was separated from, and not reunited with, his father and his brother, the father has the right of succession before brothers, because he has authority over the person and wealth of his son; since he gave him life; (for their identity is affirmed in holy writ, where it is said "he himself is born a son;" *) and because the deceased, by participating [with the manes of the grandfather and great-grandfather †] in funeral offerings, partakes of two oblations of food which his father must present to the grandfather and great-grandfather [at the same time that none are presented by his brother‡], for sons do not offer the half-monthly oblations of food, while their father lives; so the same [preference of the father before the brother] is fit in the other instance [of the estate of one who is either unseparated or reunited.§] Or, since they are alike in respect of coparcenery and reunion the equal right of father and son would be proper, not the postponement of the father's claim to the brother's. **29. An additional argument setforth.**

30. Further, the dual number, expressing, that 'parents, who are unseparated or reunited, take the heritage,' is unsuitable: for there is neither partition, nor eoparcenery, with the mother; and consequently no reunion of estate; since Vrihaspati says, "He, who being once separated, dwells again, through affection, with his father, brother, or paternal uncle, is termed reunited."|| He thus shows, that persons, who by birth have common rights in the wealth acquired by the father and grandfather, as father [and son,] brothers, uncle [and nephew,] are reunited, when after **30. The proposed ex- . . .** **It is inconsistent with Vrihaspati's definition of reunion. Interpretation of the text.**

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29. *Alike in respect of coparcenery and reunion.*] A variation in the reading of this passage is noticed by Maheswara, viz. *sansrishtatwayoh* for *sansargayoh*, but no material difference results from it in the import of the passage.

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* See Essay on the *Vedas*, As. Res. vol. 8. p. 412.

† Maheswara.

‡ Srikrishna.

§ Srikrishna, Achyuta, &c.

|| Vide infra, C 12, § 3.

having made a partition, they live together, through mutual affection, as inhabitants of the same house, annulling the previous partition, and stipulation, that "The property, which is mine, is thine; and that, which is mine, is thine." The partnership of traders, who are not so circumstanced, and only act in concert on an united capital, is no reunion. Nor are separated coheirs reunited merely by junction of stock, without an agreement prompted by affection as above stated. Therefore, since neither reunion nor coparcenery with a mother can exist, how is the contradiction in regard to the succession devolving on her before brothers, to be reconciled?

31. Approved mode of reconciling the apparent contradiction.

Sons confer benefits on their father as appears from passages of Manu and Vishnu Harita, Sankha and Likhita.

31. In the next place the manner, in which the difficulty is removed by the wise, will be stated. From the texts of Vishnu (§ 5) and the rest [as Yajnyavalkya &c.* § 4] it clearly appears, that the succession devolves on the widow, by failure of sons and other [male descendants;] and this is reasonable, for the estate of the deceased should go first to the son, grandson, and great-grandson. Thus Manu and Vishnu say, "Since a son delivers [*trayate*] his father from the hell called *put*, therefore he is named *puttra* by the self-existent himself."† So Harita says, "A certain hell is named *put*; and he, who is destitute of offspring, is tormented in hell. A son is, therefore called *puttra*, because he delivers his father from that region of horror." In like manner Sankha and Likhita declare, "A father is exonerated in his life-time from debt to his own ancestors, upon seeing the countenance of a living son; he becomes entitled to heaven by the birth of his son, and devolves on him his own debt. The sacrificial hearth, the three *vedas*, and sacrifices rewarded with ample gratuities, have not the

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31. *The manner in which the* ... *red by the wise*] By Halayudha and others who ma ... doctrine with us. Srikrishna and Achyuta

Is tormented in hell.] Achyuta and Maheswara explain *nairaya* one who goes to a place of torment (*naraya*). But Srikrishna contradicts that exposition. Consistently with one interpretation, the sense is, that 'he, who is destitute of progeny (*Khunnatantu*), will be tormented in hell.' According to the other a separate place of torment is here mentioned under the name of *Khunnatantu*.

* Chudamani and Srikrishna.

† Manu. 9, 138. Vishnu, 15, 43. Vide supra. C. 5. § 6.

sixteenth part of the efficacy of the birth of an eldest son."* Thus Manu, Sankha, Vasishtha, Likhita and Harita ordain, "By a son, a man conquers worlds; by a son's son he enjoys immortality; and afterwards by the son of a grandson, he reaches the solar abode"† So Yajnyavalkya says, "The attainment of worlds, immortality and heaven depends on a son, grandson and great-grandson."‡

Manu, &c. and Yajnyavalkya.

32. The benefit conferred is the reason of their succession.

32 Thus the proprietary right of sons and the rest is expressly ordained, as already inferrible from reasoning; because the wealth, devolving upon sons and the rest, benefits the deceased · since sons or other male descendants produce great spiritual benefit to their father or ancestor from the moment of their birth; and they present funeral oblations, half-monthly, in due form, after his decease. So Manu declares the right of inheritance to be founded on benefits conferred: "By the eldest son as soon as born, a man becomes the father of male issue, and is exonerated from the debt to his ancestors; such a son, therefore, is entitled to take the heritage"§

Manu.

33. Assents to this doctrine.

33. From the mention of it as a reason ("therefore" &c.) and since there can be no other purpose in speaking of various benefits derived from sons and the rest, while treating of inheritance, it appears to be a doctrine to which Manu assents, that the right of succession is grounded solely on the benefits conferred

34. Therefore the right extends to the great grandson.

34. Accordingly [since benefits are derived from the great-grandson as well as from the son,||] the term "son" [in the text of Manu,¶ § 32 or in that of Vishnu,** § 5 or in those of Yajnyavalkya, &c.††] [extends to the great-grand-

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The attainment of worlds, immortality and heaven.] There is a difference in the reading of the text, *lokanantyan divah praptih* "Immortality in the world and the attainment of heaven," instead of *lokanantya divah praptih* "attainment of worlds, immortality and heaven." A corresponding difference of interpretation is found in the commentaries of Vijnyaneswara, Apararka and Sulapani.

32. *Expressly ordained, as already inferrible from reason.*] Ordained by a passage of the *Veda* founded on reason. Srikrishna.

Suggested by reason and also ordained in express terms. Maheswara.

* The first stanza occurs in the institutes of Atri, 53.
† Manu, 9, 137. Vasishtha 17, 5. Also Vishnu, 15, 45.
‡ Yajnyavalkya, 1, 78. § Manu, 9, 106 Vide supra, C. I, § 36.
|| Maheswara. ¶ Chudamani. ** Maheswara.
†† Achyuta

son; for, as far as that degree, descendants equally confer benefits by presenting oblations of food in the prescribed form of half-monthly obsequies.

35. Reason of his inference.

35. Else [if it were not inferrible from reason,* or if Manu did not mean, that the right of succession rests upon benefits conferred; †] the word son could not quit its proper sense [for a larger import;] and a passage, declaratory of the grandson's right must be somehow assumed. But, admitting that such a passage may be assumed [as inferrible from the declared right of a daughter's son considered as a son's son; ‡] still there is no separate text concerning the great-grandson.

36. His right rests on the benefits conferred by him.

36. Therefore the great-grandson's right of succession is founded on benefits derived from him; and the word son is of comprehensive import.

37. Baudhyana intimates as much, in enumerating *Sapindas*.

37. Accordingly Baudhayana says, "The paternal great-grandfather and grandfather, the father, the man himself, his brothers of the whole blood, his son by a woman of the same tribe, his son's son and his great-grandson: all these partaking of undivided oblations, are pronounced *sapindas*. Those, who share divided oblations, are called *sakulyas*. Male issue of the body being left, the property must go to them. On failure of *sapindas* or near kindred, *sakulkya*, or remote kinsmen are heirs. If there be none, the preceptor, the pupil, or the priest, takes the inheritance. In default of all these, the king [has the escheat."].

38. Exposition of his text.

38. The meaning of the passage is this: since the father and certain other ancestors partake of three funeral oblations as participating in the offerings at obsequies; and since the son and other decendants, to the number of three, present oblations to the deceased [or to be shared by his manes; §] and he, who, while living, presents an oblation to an ancestor, partakes, when deceased, of oblations presented to the same person; therefore, such being the case, the middlemost [of seven, ||] who, while living, offered food to the manes of ancestors, and when dead partook of offerings made to them,

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37. *Partaking of undivided oblations.*] The terms of the text ı interpretation very differently in the *Ratnakara*.

* Srikrishna and Achyuta. † Mahaswara.
‡ Srikrishna, Achyuta and Mahesw.
§ Maheswara. || Maheswara.

became the object to which the oblations of his descendants were addressed in their life-time, and shares with them when they are deceased, the food which must be offered by the daughter's son and other [surviving descendants beyond the third degree.*] Hence those [ancestors,] to whom he presented oblations, and those [descendants,] who present oblations to him, partake of an undivided offering in the form of *(pinda)* food at obsequies. Persons, who do partake of such offerings, are *sapindas*. But one distant in the fifth degree neither gives an oblation to the fifth in ascent, nor shares the offering presented to his manes So the fifth in descent neither gives oblations to the middle person who is distant from him in the fifth degree, nor partakes of offerings made to him. Therefore three ancestors, from the grandfather's grandfather upwards, and three descendants from the grandson's grandson downwards, are denominated *sakulyas*, as partaking of divided oblations, since they do not participate in the same offering.

39. This relation of *sapindas* [extending no further than the fourth degree,†] as well as that of *sakulyas*, has been propounded relatively to inheritance.

39. The relation of *Sapindas* regards inheritance.

40. Accordingly [since the right of succession to property is founded on competence for offering oblations at obsequies,‡] Manu likewise, after premising "Not brothers, nor parents, but sons are heirs of the father;"§ proceeds, in answer to the question why? to declare, "To three must libations of water be made, to three must oblations of food be presented; the fourth in descent is the giver of those offerings; but the fifth has no concern with them."||

40. Corroborated by a passage of Manu.

41. But for mourning and other purposes, the relation of *sapindas* extends to such as partake of the remains of oblations; for that relation is defined in the *Markandeya purana* as founded on participation in the wipings of offerings. "Three others, from the grandfather's grandsire upwards, are declared to be partakers of the residue of oblations; they, and the person who performs the religious rite,

41. For mourning and other purposes, the relation of *Sapindas* is more comprehensive: according to a

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39. *This relation has been propounded relatively to inheritance*] But those, who partake of the remnants of oblations, bear the same designation [of *sapindas*] relatively to mourning, marriage, &c. *Suddhitatwa* and *Dayatatwa*.

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* Maheswara. † Srikrishna and Achyuta. ‡ Maheswara.
§ Manu, 9, 185. || Manu, 9, 186. Vide infra. Sect 6, § 7.

passage of the *Markandeya purana.*

being seventh in descent, constitute that relation, which is termed by the holy sages kin within the seventh degree"* The meaning here is kin which occasions impurity [on occasion of deaths and births.

42. And one of Manu.

42 Accordingly Manu likewise has said, when treating of uncleanness by reasn of mourning &c "The relation of *sapindas* ceases with the seventh person [in ascent or descent;] and that of *samanodakas* ends only where birth and family name are no longer known."† Else this passage would be in contradiction to the text before cited: "To three must libations of water be made &c" (§ 39.)

43. The widow, conferring spiritual benefits on her husband in the next degree to the male issue, succeeds on failure of it. A passage of Vyasa.

43. But, on failure of heirs down to the son's grandson, the wife, being inferior in pretensions to sons and the rest, because she performs acts spiritually beneficial to her husband from the date of her widowhood, [and not, like them, from the moment of their birth,‡] succeeds to the estate in their default. Thus Vyasa says, "After the death of her husband, let a virtuous woman observe strictly the duty of continence, and let her daily, after the purification of the bath, present water from the joined palms of her hands to the manes of her husband Let her day by day perform with devotion the worship of the gods, and especially the adoration of Vishnu, practising constant abstemiousness. She should give alms to the chief of the venerable for increase of holiness, and keep the various facts which are commanded by sacred ordinances A woman, who is assiduous in the performance of duties, conveys her husband, though abiding to another world, and herself [to a region of bliss."§]

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13. *The wife being inferior to sons because she performs acts spiritually beneficial from the date of her widowhood*] Chudamani's interpretation of his author's meaning is followed in this version. Achyuta dissents from it; and maintains, that the performance of acts of spiritual benefit is here stated as the reason of the widow's succession, and her incapacity for presenting oblations at the half-monthly obsequies is the reason of her inferiority to sons, and of the consequent postponement of her claim. His explanation and the reasoning by which it is supported, are refuted by Srikrishna and Maheswara.

Let her daily perform with devotion the worship of the gods.] 'And 'show hospitally to guests.' So the text is read in the *Viramitrodaya*, viz, *devatatithi-pujanam* instead of *devatanancha-pujanam*. Other variations in the reading of the text occur, but which are unimportant.

* *Markandeya purana*, 28, 4. In the story of *Madalasa.*
† Manu, 5, 60. ‡ Chudamani, Srikrishna and Maheswara.
§ Srikrishna.

44. Since by these and other passages it is declared, that the wife rescues her husband from hell, and since a woman, doing improper acts through indigence, causes her husband to fall [to a region of horror,] for they share the fruits of virtue and of vice, therefore the wealth devolving on her is for the benefit of the former owner and the wife's succession is consequently proper

44. Shows, that her good or bad conduct affects her husband in another world. Wealth, devolving on

45. Hence [since the wife's right of succession is founded on reason,*] the construction in the text of Sankha &c. (§ 15) must be arranged by connexion of remote terms, in this manner, 'The wealth of a man, who departs for heaven leaving no male issue, let his eldest [that is, his most excellent †] wife take, or, in her default, let the parents take it: on failure of them, it goes to the brothers' The term "if there be none [that is, if there be no wife ‡]," which occur in the middle of the text, (§ 15) are connected both with the preceding sentence "it goes to his brothers," and with the subsequent one "his father and mother take it" For the text agrees [with passages of Vishnu and Yajnyavalkya,§ § 4 and 5, which declare the wife's right,||] and the reasonableness of this has been already shown (§ 43.)

45. Proper interpretation of the text of Sankha &c. [§ 15.]

46. The assumption of any reference to the condition of the brethren as unseparated or as reunited,¶ not specified in the text, is inadmissible [being burdensome and unnecessary,**] Therefore the doctrine of Jitendriya, who affirms the right of the wife to inherit the whole property of her husband leaving no male issue, without attention to the circumstance of his being separated from his coheirs, or united with them, (for no such distinction is specified,) should be respected.

45. A different opinion (§ 19) is erroneous. Jitendriya doctrine is right.

47. The rank of wife belongs in the first place to a woman of the highest tribe. for the text [of Sankha &c.††] expresses, that "the eldest wife takes the wealth" (§ 15 & 45,) and seniority is reckoned in the order of the tribes.

47. The wife must be a woman of the same tribe:

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47. *The rank of a wife belongs in the first place, &c.*] Srikrishna remarks, that Chudamani expounds this whole paragraph differently from the sense in which he himself has explained it. According to Chudamani. 'Yajnyavalkya and Vishnu (§ 4 & 5) ordain, that the estate of a childless man shall go to his widow. Sankha (§ 15) adds

* Srikrishna. † *Viramitrodaya.* ‡ Raghunandana.
§ Chudamani, Achyuta and Srikrishna. || Maheswara.
¶ Vide § 19. ** Srikrishna. †† Achyuta, Srikrishna and Maheswara.

Manu declares her precedence.

Thus Manu says, When regenerate men take wives both of their own class and others, the precedence, honour and habitation of those wives must be settled according to the order of their classes."* Therefore [since seniority is by tribe,†] a woman of equal class, though youngest in respect of the date of marriage, is deemed eldest. The rank of wife *(patni)* belongs to her, for she alone is competent to assist in the performance of sacrifices and other sacred rites. Accordingly Manu says, "To all such married men, the wives of the same class only (not wives of a different class by any means) must perform the duty of personal attendance and the daily business relating to acts of religion. For he, who foolishly causes those duties to be performed by any other than his wife of the same class, when she is near at hand, has been immemorially considered as a mere *Chandala* begotten on a *Brahmani* "‡ But on failure of a wife of the same tribe, one of the tribe immediately following [may be employed in such duties.] Thus Vishnu ordains, "If there be no wife belonging to the same tribe, [he may execute the business relating to acts of religion] with one of the tribe immediately following, in case of distress. But a regenerate man must not do so with a woman of the *Sudra* class."§ 'Execute business relating to acts of religion,' is understood from the preceding sentence ‖ Therefore a *Brahmani* is lawful wife *(patni)* of a *Brahmaná*. On failure of such, a *Kshatriya* may be so, in case of distress; but not a *Vaisya*, nor a *Sudra*, though married to him. A *Kshatriya* woman is wife of a *Kshatriya* man In her default, a *Vaisya* woman may be so, as belonging to the next following tribe; but not a *Sudra* woman. A *Vaisya* is the only wife for a *Vaisya*: since a *Sudra* wife is denied in respect of the regenerate tribes simply.

In her default a woman of the next tribe. Conformably with a passage of Vishnu.

But not a woman of a lower class.

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the condition, that she be the eldest wife. Manu (§ 47) restricts the rank of eldest wife to a woman of equal class · and states the purpose to be her personal attendance &c. In the passage cited from Vishnu, (§ 47) that is extended to a woman of the next following tribe. Therefore, to render all these passages consistant, since it appears that the eldest wife succeeds, and Yajnyavalkya and the rest use the word wife for one competent to inherit, and it further appears from passages to be hereafter cited, (§ 48) that brothers and the rest inherit the estate, giving only a maintenance to women who are not of that rank, it follows, that the rank of wife is restricted to the woman of equal class and to one of the next following tribe.' Srikrishna on the other hand admits, in concurrence with Achyuta, that, in a case of the utmost distress, a woman

* Manu, 9, 85. † Srikrishna. ‡ Manu, 9, 86—87.
§ Vishnu, 26, 3. ‖ Vishnu, 26, 1.

48. A maintenance, declared by Narada, regards woman espoused but not reckoned as wives.

48. In this manner must be understood the succession to property in the order in which the rank of wife is acknowledged. Therefore, since women actually espoused may not have the rank of wives, the following passage of Narada intends such a case. "Among brothers, if any one die without issue, or enter a religious order, let the rest of the brethren divide his wealth, except the wife's separate property. Let them allow a maintenance to his women for life, provided these preserve unsullied the bed of their lord. But, if they behave otherwise, the brethren may resume that allowance."* So [this other passage †] of the same author; ["On failure of heirs, the property goes to the king,‡] except the wealth of a *Brahmana*. But a king, who is attentive to the obligations of duty, should give a maintenance to the women of such persons. The law of inheritance has been thus declared."§ The allotment of a maintenance to the women of such persons, not being of the rank of wives, and the declared right of wives to succeed to the whole estate, constitute no discrepany.

There is no discrepancy.

49. Passages of Vrihaspati and Narada reconciled on the same principle.

49. Accordingly, Vrihaspati propounds the king's right to an escheat in default of the wife: "If men of the military, commercial and servile tribes die childless, leaving neither wife nor brother, let the king take the property; for he is indeed lord of all." But Narada, directing, that he should give a maintenance to the women of such persons," (§ 48) authorizes the king to take the whole estate,

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of the *Vaisya* tribe, being married to a *Brahmana*, may be employed by him in religious offices. It should follow, that she may be capable of inheriting. This, however, is not expressly stated.

Though youngest in respect of the marriage.] Upon the death of the first wife, who is a *Brahmani*, and after a marriage with a *Kshatriya* another *Brahmani*, who is subsequently espoused, is 'one youngest in respect of the date of marriage.' Else [if the *Kshatriya* were the first wife,] the marriages would be in the inverse order of the classes; which is forbidden. Chudamani, Achyuta and Srikrishna.

She alone is competent to the performance of sacred rites.] According to the remark of Achyuta and Srikrishna, this alludes to the grammatical rule for the derivation of *patni* wife, from *pati* husband; as intending his female associate in the performance of religious ceremonies. Vide Panini, 4, 1. 35. *Mitakshara* on inheritance, 2, 1. 5.

48. *Not being of the rank of wives.*] Being of a tribe distant by one intermediate degree, or being of the *Sudra* class. Chudamani and Srikrishna.

* Narada, 13 25—26.
† Srikrishna, &c.
‡ Narada, 13, 51.
§ Narada, 13, 52.

giving to them enough for their support This contradiction must be reconciled by distinguishing between the wife and the espoused woman. Accordingly, in passages declatory of the wife's right of succession, the term "wife" *(patni)* is employed: and, in those which ordain a maintenance, the terms "woman" (*stri* or *nari*) or "spouse" (*bharya*) or other similar word.

50. Proper interpretation of the text of Devala (§ 17) 50. In the text of Devala, (§ 17) which expresses, "Next let brothers of the whole blood divide the heritage of him, who leaves no male issue, or daughters equal [as appertaining to the same tribe,] or let the father, if he survive, or brothers belonging to the same tribe, or the mother, or the wife, inherit in their order, but, on failure of all these, the nearest of the kinsmen succeed;" where "daughters equal" are such as appertain to the same class [with the deceased]; and "brothers belonging to the same tribe" intend those of the half blood, for whole brothers are specified under the appropriate term, and the distinction would be impertinent [as not excluding any one,* or as superfluous, since whole brothers of course belong to the same tribe,†] in this text, we say, the order, in which heirs are enumerated, from the whole brother to the wife, is not intended for the order of their succession, since it contradicts Vishnu and the rest [as Vrihaspati, and Yajnyavalkya‡]: but the meaning of the text is, that the heirs shall take the succession in the order declared by Vishnu and others. To mark uncertainty in the specified order, the author has twice used the word 'or,' once in the phrase "or daughters," and again in the sentence "or let the father &c" and the word is also understood in other places Thus Devala has himself shown vagueness in his own enumeration, intimating that 'either brothers, or daughters, or parents &c. [take the succession.']

51. Baloka's opinion refuted. 51 As for what has been said by Baloka, concerning the text of Sankha and the rest (§ 15), that it either relates to a wife inferior in class to her husband, or supposes the widow to be young, or is relative to brethren unseparated or

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51. *If either relates to a wife inferior in class*] According to this opinion, the passage is read with the interposition of the privative ***a***: "The wife not eldest," that is, inferior by tribe. (Vide § 15.) Achyuta and Srikrishna.

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* Srikrishna. † Ragh. on *Dayabhaga*. ‡ Maheswara.

reunited; that author has manifested his own imbecility by thus proposing an indefinite interpretation of the law: for the doubt remains [which of the three is intended;*] and neither rule could be followed in practice.

52. As for the assertion, that the text, which ordains a maintenance, is relative to an unmarried woman and concubine, that must be rejected as intending a favour to the matrons; for the scope of the precepts, which allot a maintenance to women, has been already shown.

52. The allotment of a maintenances does not regard concubines.

53. Moreover, under the distinction respecting the wife as belonging to the same or to a different tribe, how is the contradiction [of the text to passages of Vishnu and Yajnyavalkya† § 4 and 5] regarding the succession of parents and brothers, to be reconciled [without transposition, or without connecting in construction remote terms?‡] If it be by distinguishing the cases of reunion and continued separation, the same distinction may pervade the whole subject: and what occasion is there for assuming a difference relative to the wife, as belonging to the same or to another tribe? But the proposed distinction, founded on reunion and separation, [§ 19] has been already fully refuted by us [§ 30.]

53. Further argument against a different interpretation.

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Or supposes the widow to be young.] Conformably with the text of Harita, which directs, that property, sufficient only for the support of life, should be allotted to a young widow. Achyuta, Srikrishna and Maheswara.

Or is relative to brethren unseparated or reunited.] The reasoning, on which this is grounded, has been before stated. (Vide § 19.) Srikrishna.

52. *As for the assertion.*] Of the same author, according to Srikrishna. But Maheswara says, a certain author.

Intending a favour to the matrons.] This passage, which is obscure, has been explained by Srikrishna as ironical; the concubines being here tauntingly termed matrons: and Maheswara quotes Chudamani as authority for that interpretation But the same commentators, in concurrence with Achyuta, state another explanation in which the wives are understood by matrons It is only by fovour of the wives, who themselves inherit the whole property, that a maintenance is allowed to the concubines

53. *The proposed distinction founded on reunion &c. has been refuted.*] Maheswara understands this to be levelled against the doctrine of the *Maithila* school.

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* Srikrishna. † Maheswara. ‡ Maheswara. Vide § 45.

54. A distinction of the whole and half-blood does not reconcile the contradiction, being inconsistent with a passage of Vrihaspati.

54. The distinction regarding the whole and the half-blood is contradicted by Vrihaspati who says "Let the wife of a deceased man who left no male issue, take his share, notwithstanding kinsmen, a father, a mother, or uterine brethren present."* Uterine brethren are brothers by the same mother [and of course of the whole blood.] The author declares the wife's right of succession, although such parents exist. By the term "his share," is undestood the entire share appertaining to her husband; not a part of it only [sufficient for her support.†]

55. Conclusion in favour of the proposed construction.

55. Therefore the interpretation of the law is right as set forth by us.

56. The widow is restricted from gift, mortgage and sale.

56. But the wife must only enjoy her husband's estate after his demise. She is not entitled to make a gift, mortgage or sale of it. Thus Katyayana says, "Let the childless widow, preserving unsullied the bed of her lord, and abiding with her venerable protector, enjoy with moderation the property until her death. After her let the heirs take it."

57. She shall enjoy the estate for life: and after her it goes to her husband's heirs.

57. Abiding with her venerable protector, that is, with her father-in-law or others of her husband's family, let her enjoy her husband's estate during her life; and not, as with her separate property, make a gift, mortgage or sale of it at her pleasure. But, when she dies, the daughters or others, who would regularly be heirs in default of the wife, take the estate; not the kinsmen [or *sapindas*. ‡] since these, being inferior to the daughter and the rest, ought not

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54. *The distinction regarding the whole and half-blood.*] The opinion that the whole brother inherits before the wife, but the half brother after her. Chudamani and Achyuta.

56. *Abiding with her venerable protector.*] This is according to the usual reading of the text, and conformable with the interpretation of it in the *Ratnakara* But, in the *Dayatatwa*, it is read *vrateshthita* in place of *gurausthita;* and the reading is expounded by the commentator Kasirama, 'diligent in such observances as may be beneficial to her husband in another world.' He rejects another interpretation, 'observant of fasts.'

Enjoy with moderation.] With abstemiousness, according to the commentators, Srikrishna and Achyuta But, in the *Smriti-chandrika*, it is explained 'patient of control' There is considerable difference in the interpretation of the text, as to its general scope, according to various compilers, by whom it is cited.

* Vide supra. § 1. † Maheswara. ‡ Maheswara.

to exclude those heirs . for the widow debars them of the succession; and, the obstacle being equally removed if her right cease or never take effect, it can be no bar to their claim.

58. Now shall the heirs of the woman's separate property [as her brothers &c *] take the succession [on failure of daughters and daughter's sons, to the exclusion of her husband's heirs,†] for the right of those [persons, whose succession is declared under that head,‡ C. 4.] is relative to the property of a woman [other than that which is inherited by her §] Katyayana has propounded by separate texts the heirs of a woman's property; and [his text, declaratory of the succession to heritage,||] would be tautology: [consequently heritage is not ranked with woman's peculiar property ¶] 58. Not to be own heirs.

59. Therefore those persons, who are exhibited in a passage above cited (§ 4) as the next heirs on failure of prior claimants, shall, in like manner as they would have succeeded if the widow's right had never taken effect, equally succeed to the residue of the estate remaining after her use of it, upon the demise of the widow in whom the succession had vested. At such time [when the widow dies,** or when her right ceases,††] the succession of daughters and the rest is proper, since they confer greater benefits on the deceased [by the oblations presented by them ‡‡] than other claimants [such as the *sapindas* above-mentioned.§§ § 37.] 59. The heirs of her husband take the residue, after her use and consumption.

60. Thus in the *Mahabharata*, in the chapter entitled *Danadharma*, it is said "For women, heritage of their husbands is pronounced applicable to use. Let not women on any account make waste of their husband's wealth."¶¶ 60. A passage of *Mahabharata* confirms this.

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60. *Thus in the Mahabharata, &c.*] The author here corroborates what had been said concerning the restriction on the widow's power of gift, mortgage and sale (§ 56) Achyuta, Srikrishna and Maheswara.

The passage, here cited, is read differently in the text of the *Mahabharata; pati-dayadyam*, instead of *pati-dayah*. But both readings may be interpreted in the same sense. One of the commentators on the poem notices another variation, *pativittah*, instead of *pativittat* 'their husband's wealth.' Another commentator expounds the passage in a different manner: 'Let not sons resume any part of the wealth given to a woman by her husband.'

* Srikrishna and Achyuta. † Srikrishna and Achyuta.
‡ Maheswara. § Maheswara. || Srikrishna, &c. ¶ Achyuta, &c.
** Srikrishna. †† Chudamani. ‡‡ Maheswara. §§ Maheswara.
¶¶ *Mahabharata*, *Danadharma*, 46, 24.

passage. She may make a gift or sale for the obsequies of her husband.

61. Even use should not be by wearing delicate apparel and similar luxuries: but, since a widow benefits her husband by the preservation of her person, the use of property sufficient for that purpose is authorized. In like manner [since the benefit of the husband is to be consulted,*] even a gift or other alienation is permitted for the completion of her husband's funeral rites. Accordingly the author says, "Let not women make waste." Here "waste" intends expenditure not useful to the owner of the property.

62. For her maintenance, she may mortgage or sell, if nece

62. Hence, if she be unable to subsist otherwise, she is authorized to mortgage the property; or, if still unable, she may sell or otherwise alien it: for the same reason is equally applicable.

63. She should give suitable presents to her husband's kindred at his obsequies.

63. Let her give to the paternal uncles and other relatives of her husband presents in proportion to the wealth, at her husband's funeral rites. Vrihaspati directs it, saying "With presents offered to his manes, and by pious liberality, let her honour the paternal uncles of her husband, his spiritual parents and daughter's sons, the children of his sister, his maternal uncles, and also ancient and unprotected persons, guests, and females of the family."† The term "paternal uncle" intends any *sapinda* of her husband; "daughter's sons," the descendants of her husband's daughter; "children of his sister," the progeny of her husband's sister's son; maternal uncles," her husband's mother's family.

Not to her own kindred.

To these and to the rest, let her give presents, and not to the family of her own father, while such persons are forthcoming: for the specific mention of paternal uncles and the rest would be superfluous.

64 Unless with the sanction of her husband's relations. Narada declares them to be her guardians.

64. With their consent, however, she may bestow gifts on the kindred of her own father and mother. Thus Narada says, "When the husband is deceased, his kin are the guardians of his childless widow. In the disposal of the property, and care of herself, as well as in her maintenance, they have full power. But, if the husband's family be extinct or contain no male, or be helpless, the kin of her own father are the guardians of the widow, if there be no relations of her husband within the degree of a *sapinda*."‡ In the disposal of property by gift or otherwise, she is subject to the control of her husband's family, after his decease, and in default of sons.

She is subject to their control.

65. In like manner, the

65. In like manner, if the succession have devolved on a

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65. *In the like manner, if the succession have devolved on a daughter*

* Srikrishna. † Vide supra. § 2. ‡ Narada, 13, 28—29.

daughter, those persons who would have been heirs of her father's property in her default, [as her son, her paternal grandfather &c *] take the succession on her death ; not the heirs of the daughter's property [as her daughter's son &c.†] — succession, devolving on a daughter, passes, after her, to her father's heirs.

66. The widow should give to an unmarried daughter a fourth part out of her husband's estate, to defray the expenses of the damsel's marriage Since sons are required to give that allotment,‡ much more should the wife, or any other successor, give a like portion. — 66. An unmarried daughter should have a share allotted by the widow for the expenses of her marriage.

67. Thus has the widow's right of succession been explained — 67. Conclu-

SECTION. II.

On the right of the Daughter and Daughter's Son.

1. The daughter's right of succession on failure of the wife [is declared.§] On that subject Manu and Narada say, "The son of a man is even as himself; and the daughter is equal to the son : how then can any other inherit his property, notwithstanding the survival of her, who is as it were himself?"‖ Narada particularizes the daughter [as inheriting in right of her continuing the line of succession ;] "On failure of male issue, the daughter inherits, for she is equally a cause of perpetuating the race ; since both the son and daughter are the means of prolonging the father's line."¶ The author states the circumstance of her continuing the line as a reason of the daughter's succession : and the — 1. A daughter inherits if there be no widow ; conformably with passages of Manu and Narada, in right of oblations to be presented by her son.

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those person, &c] If the next heirs succeeds to the residue of the property, in the instance of the widow, whose right is preferable to the daughter's, much rather should the next heirs, who would regularly succeed if there were no daughter, take the succession after her. Srikrishna and Achyuta.

Upon the same principle, the succession, devolving on the mother by the death of her son, passes after her decease to the heirs of her son ; and not to her own heirs. See Sect. 2. § 31.

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* Achyuta and Srikrishna. † Achyuta and Srikrishna.

‡ Vide C. 3. § 34. § Srikrishna.

‖ Manu, 9, 130. Not found in Narada' institutes.

¶ Narada, 13, 49.

line of descendants here intends such descendants as present funeral oblations ; for one who is not an offerer of oblations, confers no benefits, and consequently differs in no respect from the offspring of a stranger or no offspring at all

2. Her son only presents such oblations.

2. It is the daughter's son, who is the giver of a funeral oblation, not his son ; nor the daughter's daughter : for the funeral oblation ceases with him.

3. Dikshita rightly prefers the daugher, who has or is likely to have male issue.

3. Therefore the doctrine should be respected, which Dikshita maintains, namely that a daughter, who is mother of male issue, or who is likely to become so, is competent to inherit ; not one, who is a widow, or is barren, or fails in bringing male issue as bearing none but daughters, or from some other cause.

4. The maiden daughter has the best claim, according to Parasara.

4. Here again, the unmarried daughter is in the first place sole heiress of her father's property [to the exclusion of any daughter verbally betrothed *] Accordingly Parasara says, "Let a maiden daughter take the heritage of one who dies leaving no male issue ; or, if there be no such daughter a married one shall inherit." In the term "married" is here implied the restriction before-mentioned [excluding one who fails in bringing male issue †]

5. And Devala.

5. Thus Devala says, "To maidens should be given a nuptial portion out of the father's estate But of him, who leaves no appointed daughter, [nor son,] the unmarried daughter, belonging to his own tribe, and legitimate, shall take the inheritance, like a son" The term "appointed daughter" implies also son. "His own ;" belonging to the same tribe with himself. "Legitimate ;" his own lawful issue.

6. Her marriage in requisite to the welfare of her ancestor.

6. This is proper: for should the maiden arrive at poberty unmarried, through poverty, her father and the rest would fall to a region of punishment, declared by holy writ. Thus Vasishtha says, "So many seasons of menstruation as

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5. *Out of the father's estate*] This is according to the reading, which is followed by this author, as well as by Raghunandana. But in other compilations, as the *Smriti-chandrika*, *Ratnakara* and *Viramitrodaya*, the text is read *pitri-dravyam* instead of *pitri-dariyat*. and the author of the last-mentioned work explains the passage as signifying, that 'a portion of the paternal estate [equal to the fourth part of a share] and nuptial presents should be given to a maiden daughter.'

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* Chudamani and Srikrishna. † Chudamani and Srikrishna.

as shown by Vasishtha and Paithinasi.

overtake a maiden feeling the passion of love and sought in marriage by persons of suitable rank, even so many are the beings destroyed by both her father and her mother; this is a maxim of the law."* So Paithinsi: "A damsel should be given in marriage, before her breasts swell. But, if she have menstruated [before marriage] both the giver and the taker fall to the abyss of hell; and her father, grandfather and great-grandfather are born [insects] in ordure Therefore she should be given in marriage while she is yet a girl."

7. And the appropriation of the wealth to that purpose is for her father's benefits.

7. Since then the father and the rest are saved from hell by sufficient property becoming applicable to the charges of her marriage; and being accordingly married, she confers benefits on her father by means of her son; the wealth which devolves on her is for the benefit of the [former] owner;† and it is reasonable, therefore, that the property should descend to the unmarried daughter, on failure of the wife.

8. Next a daughter who has or is likely to have male issue, succeeds: as intimated by Vrihaspati.

8. But if there be no maiden daughter, the succession devolves on her who has, and on her who is likely to have, male issue. That is declared by Vrihaspati: "Being of equal class and married to a man of like tribe, and being virtuous and devoted to obedience, she [namely the daughter,‡] whether appointed or not appointed to continue the male line, shall take the property of her father, who leaves no son [nor wife." §]

9. Interpretation of the text.

9. Of equal class.] Belonging to the same tribe with her father. Married to a man of like tribe.] This is intended to exclude one married to a man of a superior or inferior tribe. For the offspring of a daughter married to a man of a higher or lower class is forbidden to perform the obsequies of his maternal grandfather and other ancestors, who are of inferior or of superior rank. But one, married to a man belonging to the same class, confers benefits on her father by means of her son.

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9. *To exclude one married to a man of a superior or inferior tribe &c.*] This remark of Jimutavahan [illegible] inadmissible: for the term 'married' excludes the notion of u[illegible] a man of inferior tribe; since there can be no marriage between a wom[illegible] of higher tribe and a man of a lower one. Therefore the intent [illegible] is to exclude one married to a man of superior class. *Viramitrodaya.*

* Vasistha. 17, 56.

† Vide Sect. 1. § 44.

‡ Vide § 12.

§ Srikrishna and Chudamani.

10. A daughter appointed to continue the male like has a preferable title.

10. The son of a daughter appointed to continue the male line is, like a son, highly beneficial to his ancestor; and, through him, the appointed daughter is equal to a son: wherefore the appointed daughter and legitimate son have an equal right of succession.* But a married daughter, who was not so appointed, confers less benefit on her father than the son and the rest [viz. the son's son and grandson's son,† and the widow; ‡] and is of benefit by means only of her son: it is proper, therefore, that she should succeed only on failure of other heirs down to the unmarried daughter.

11. An argument for preferring one who has male issue to the maiden daughter, refuted.

11. It must not be alleged, that admitting this doctrine [of benefits conferred being the cause of a right of succession.§] the daughter, who has male issue, should alone inherit in the first instance; but, on failure of such, then a daughter who may have issue. For her son, born subsequently, might in this manner be excluded from the succession. Nor is this proper; for both equally confer benefits on their grandfather, as daughter's sons.

12. A widow is excluded by implication (§ 8.)

12. By this specifying "obedience" to her husband (§ 8), the author indicates, that she is not in the state of widewhood, and that consequently she may have issue.

13. Further exposition of the text (§ 8.) A daughter does not inherit of

13. In the text before cited (§ 8), the pronoun refers to the word "daughter" contained in a preceding passage [which will be forthwith quoted || § 14.] Thus by the conditions specified, that she be "of equal class" and "married to a man of like tribe" &c. (§ 8), the author shows, that she does not inherit her father's wealth merely in right of her relation as daughter. Else, since the daughter's right

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Who are of inferior or of superior rank.] A daughter's son of a superior tribe is forbidden to offer a funeral repast to the manes of his maternal grandfather who is of a lower tribe, and a daughter's son, being of inferior rank, is forbidden to offer it for his maternal grandfather who is of a higher class. Ragh. on *Dayabhaga*.

11. *For her son might be excluded from the succession.*] Accordingly the notion, that, in the case of two daughters having male issue, one a widow, the other having a husband living, the widow should inherit in the first instance, because she first offers funeral oblations through her son [whose father is already dead], is refuted. Achyuta and Srikrishna.

* Vide C. 10. † Srikrishna ‡ Chudamani.
§ Achyuta and Srikrishna. || Chudamani, Srikrishna, &c.

of succession is declared by the following passage, the mention of it by the same author in the foregoing text would be a vain repetition. But a special rule, regarding what was suggested generally, is not tautology. course, in right of her relation as such.

14. "As a son so does the daughter of a man proceed from his several limbs. How then should any other person take her father's wealth?"* 14. A passage of Vrihaspati compares the daughter to the son.

15. Since a daughter's right of succession to the property of her father is founded on her offering funeral oblations by means of her son; therefore, even in the case of an appointed daughter, on whom the estate has devolved by the demise of her father, should she bear no male issue in consequence of her proving barren, or because her husband is incapable of procreation, the property does not go upon her death to her husband. Thus Sankha and Likhita say, "The husband is not entitled to the wealth of his wife being an appointed daughter, if she die leaving no issue." So Paithinasi: "On the death of an appointed daughter, her husband does not inherit her property: if she leave no issue, it shall be taken by her unmarried sister or by another." Hence her property is to be taken by her maiden sister, or by another sister likely to have issue. Therefore, when the succession has devolved on a female, [her husband's†] claim [as her heir] is precluded. 15. If an appointed daughter bear no issue: the property does not go to her husband: according to Sankha and Likhita; and Paithinasi.

16. But the following passage of Manu must be understood to be applicable, on the demise of an appointed daughter who has not been destitute of male issue, having 16. A contradictory passage of Manu supposed her to have borne issue.

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14. *Proceeds from his several limbs.*] This is an allusion to a passage of the *Veda* which is quoted by Baudhayana. It is addressed by a father to his son. From my several limbs thou art distilled from my heart thou art produced thou art indeed self but denominated son: may thou live a hundred years.

15. *By her unmarried sister or by another.*] The text is read and interpreted differently in the *Ratnakara*. If she leave no son, it shall be taken by her daughter or by her sister. This is according to the reading of the text as it is cited in the *Kalpataru*: *aputrayan kumarya svasra tatadgrahyam* instead of *aputrayan kumarya svasratad grahyan tadanyah*.

16. *Having borne a son who has died.*] Jimutavahana's text exhibits the conjunctive particle *cha*; and according to this reading, the sense

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* Vrihaspati.

† Chudamani, Achyuta and Srikrishna.

borne a son who has died. "Should a daughter, appointed to continue "the male line, die by any accident without a son, the husband of that daughter may without hesitation possess himself of her property."*

17. A daughter's son is the next heir; as declared by Vrihaspati.

17. Vrihaspati recites the gift of the funeral oblation as the sole cause [of right] in the instance of both [the daughter and the grandson.] "As the ownership of her father's wealth devolves on her, although kindred exist: so her son likewise is acknowledged to be heir to his maternal grandfather's estate" As the daughter is heiress of her father's wealth in right of the funeral oblation which is to be presented by the daughter's son; so is the daughter's son owner of his maternal grandfather's estate in right of offering that oblation, notwithstanding the existence of kindred, such as the father and others.

18. The text does not concern the offspring of an appointed daughter.

18. Now does the text (§ 17) relate to the son of an appointed daughter: for the pronoun "her," in both the phrases ("devolves on her," and "her son is acknowledged,") bears reference to the "daughter whether appointed or not appointed," who was mentioned in the preceding passage (§ 8.) Or, upon the principle of selecting the nearest term, the reference may properly be to the "daughter not appointed." But this term cannot be rejected to select the other.

19. Manu states relation as the reason of the daughter's son inheriting.

19. Accordingly Manu propounds the daughter's origin from the person of the maternal grandfather as the reason of the daughter's son having a right to the succession; not her appointment to raise a son: else he would have specified this cause. "Let the daughter's son take the whole estate of his own father who leaves no [other son;] and let him offer funeral oblations; one to his own father, the other to his maternal grandfather. Between a son's son and the son of a daughter, there is no difference in law; since their father and mother both sprung from the body of the same man."†

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should be 'who is not destitute of male issue and who has borne a son who has died. But Achyuta and Srikrishna censure it as an erroneous reading.

19. *There is no difference.*] By this likening the grandson in the female line to the grandson in the male line, it is intimated, that, as, on failure of the son, the son's son is heir, so, in default of the daughter, the daughter's son is the successor. Ragh. on *Dayatatwa*.

* Manu, 9. 135.

† Manu, 9, 132—133.

20. He expressly declares his right of succession.

20. Thus this very author expressly declares, that the daughter's son, born of one not appointed to continue the male line, has the right of succession. "By that male child, whom a daughter, whether formally appointed or not, shall produce from a husband of an equal class; the maternal grandfather becomes in law the father of a son let that son give funeral oblation and possess the inheritance."*

21. Daughter's son intends son of an appointed daughter's: as is intimated by Baudhayana.

21. Besides the term 'daughter's son' is in law restricted to signify the male offspring of an appointed daughter, Baudhayana intimates that, when he says "[Consider as] another [son] the daughter's son termed son of an appointed daughter, being born of the female issue after an express stipulation." Here 'consider' is understood.

22. Bhojadeva cites the text (§ 17) as of general import.

22. Hence also [since such is the scope and purport of the text;† § 17.] Bhojadeva has cited that passage of Vrihaspati under the head of succession of a daughter appointed or unappointed

23. Govindaraja prefers the daughter's son to the married daughter: conformably with a passage of Vishnu.

23 But Govindaraja, in his commentary on Manu, states the claim of the daughter's son as preferable to that of the married daughter, on the grounds of the following passage of Vishnu, "If one die leaving neither son nor grandson, the daughter's sons shall inherit the estates; for, by consent of all, the son's son and the daughter's son are alike in respect of the celebration of obsequies."‡

24. This is unsatisfactory.

24. This does not appear to us satisfactory: for it contradicts the text above cited (§ 8.)

25. A daughter's son inherits after the married daughter.

25. But, in default of a married daughter such as above described, the succession assuredly devolves on the daughter's son notwithstanding the existence of the father and other kinsmen. For it appears from the comparison of his condition to hers, (§ 17) and more expressly from the purport of the term "likewsie" in the phrase "her son like-

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Consider as another son] In the *Kalpataru*, the text is read *asyam* "her" instead of *anyam* "another." That reading varies the construction rather than the purport of the text.

21. *After an express stipulation*] After the accepting of her as 'an appointed daughter. (Vide § 15—17.) Chudamani and Srikrishna.

25. *A married daughter such as above described*] Who does not fail of bearing issue Chudamani, Achyuta and Srikrishna.

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* Manu, 9, 136. † Srikrishna.

‡ Not found in Vishnu's institutes. It is cited by Raghunandana in the *Dayatatwa*, as on the authority of Govinda-Raja's quotation.

wise is acknowledged to be heir," (§ 17) that his pretensions are inferior to her's Therefore it is a right deduction, that the succession of the daughter's son is next after the daughter.

26. And before the father and mother.

26. By the words "although kindred exist," (§ 17) the succession of both parents, which reasonably should take effect on failure of the wife, but which is barred by the daughter and daughter's son, is hinted as taking place when no such impediment exists Accordingly Vrihaspati, immediately after [the passage above cited,* § 17] says "On failure of those persons, the brothers and nephews of the whole blood are entitled to the estate, or kinsmen, or cognates, or pupils, or venerable priests" Here the word "those" bears reference to the daughter's son [named in the text,] and to the parents indicated [by the term kindred†] Therefore, it is on failure of these persons, that the succession of brothers and the rest takes place

27. Baloka postpones the claim of the daughter's son; erroneously.

27 As for the assertion of Baloka, that the daughter's son inherits after the whole series of heirs specified in the passage of [Yajnyavalkya] above cited, "The wife, daughters also," &c (Sect 1 § 4) that is mere childish prattle, for it contradicts the text of Vrihaspati (§ 17) Now is there anything inconsistent with that enumeration of heirs, for the maiden daughter, married daughter, and daughter's son, are all signified by the term "daughters" in the plural number (Sect 1 § 4) As the word "son," in the phrase "who departed for heaven leaving no son," intends male issue down to the great-grandson, since he is equally a giver of funeral oblations; so does the term "daughter" comprehend the daughter's son, for he also is the giver of a funeral offering; or as the term "male issue," in the sentence "on failure of male issue, the daughter inherits" (§ 1), intends, the widow also Else the plural number, in the word "daughters," would be unmeaning and the author

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Who has or is likely to have male issue. Ragh on *Dayabhaga.*

26. *Bears reference to the parents*] Else, if the brothers inherit next after the daughter's son that would contradict Yajnyavalkya and the rest as above cited (Vide Sect. 1. § 4) Chudamani and Srikrishna.

27. *As for the assertion, that the daughter's son inherits after the whole series of heirs &c.*] This doctrine is maintained by the *Maithila* school, as is remarked by Srikrishna in the *Krama-Sangraha.*

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* Ragh. on *Dayabhaga.* † Srikrishna.

would have used the singular number, as in the words "the wife," "the son of a brother" &c We shall hereafter [in the course of expounding passages concerning the reunion of parceners*] explain the intention of the plural number in the word "brothers" (Sect 1 § 4.)

28. He would not inherit in any case.

28 Moreover, since a series of heirs is specified from both parents to the king, it would follow, that the succession of the daughter's son takes effect on failure of the king. But there never is a vacancy of the throne, and consequently the succession could never take place

29. The other doctrine should be admitted.

29 Therefore the succession of the daughter's son on failure of daughters, as affirmed by Viswarupa, Jitendriya, Bhojadeva and Govinda-raja, should be respected.

30. If the daughter die without issue, her father's next heirs succeed.

30. But, if a maiden daughter, in whom the succession has vested, and who has been afterwards married, die [without bearing issue,†] the estate, which was hers, becomes the property of those persons, a married daughter or others, who would regularly succeed if there were no such [unmarried daughter] in whom the inheritance vested, and in like manner succeed on her demise after it has so vested in her. It does not become the property of her husband or other heirs. for that [text, which is declaratory of the right of the husband and the rest,‡] is relative to a woman's peculiar property Since it has been shown by a text before cited (Sect. 1 § 56), that, on the decease of the widow in whom the succession had vested, the legal heirs of the former owner, who would regularly inherit his property if there were no widow in whom the succession vested, namely the daughters and the rest, succeed to the wealth ; therefore the same rule [concerning the succession of the former possessor's next heirs§] is inferred a fortiori, (a) in the case of the daughter and grandson whose pretensions are inferior to the wife's.

31. The rule is general in the case of a woman's succession.

31. Or the word "wife" [in the text above quoted,‖ Sect. 1. § 56] is employed with a general import. and it implies, that the rule must be understood as applicable generally to the case of a woman's succession by inheritance

32. Conclusion.

32. Thus has the succession of the daughter and daughter's son been explained.

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* Achyuta and Srikrishna Vide infra Sect 5 § 37.
† Srikrishna. ‡ Srikrishna § Srikrishna ‖ Srikrishna

(a) *On the analogy of the staff and the loaf* is the literal translation. The meaning is that after the widow and the daughter, the heirs of the deceased *i.e* the daughter in the former case and the daughter's son in the latter, when they exist succeed. If they do not exist, other heirs succeed.

SECTION III.

On the father's right of succession

1. The father is next heir after the daughter's son.

1. If there be no daughter's son, the succession devolves on the father; and not on the mother [before the father]; nor at once on both parents. For that is contrary to Vishnu text "If there be none, it belongs to the father; if he be dead, it appertains to the mother"*

2. Passages of Manu and Vrihaspati, which declare the mother's succession, suppose the demise of the father.

2. But the following passage of Manu, as well as that of Vrihaspati, must be understood are relating to a case of failure of heirs down to the father inclusively. "Of a son dying childless [and leaving no widow†] the mother shall take the estate; and, the mother also being dead, the father's mother shall take the heritage."‡ "Of a deceased son, who leaves neither wife nor male issue, the mother, must be considered as heiress: or, by her consent, the brother may inherit."§

3. The preferable right of the father is a result of reasoning.

3. This is a result too of reasoning. The father's right of succession should be after the daughter's son and before the mother: for the father, offering two oblations of food to other manes, in which the deceased participates, is inferior to the daughter's son who presents one oblation to the deceased and two to other manes in which the deceased participates: he is preferable to the mother and the rest because he presents [personally||] to others two oblations in which the deceased participates; and his superiority is indicated in a passage of Manu: "In a comparison of the male with the female sex, the male is pronounced superior."¶

4. And is indicated by the text which expresses "parents."

4. In the term *pitarau* "both parents" (Sect. 1. § 4), the priority of the father is indicated: for the father is first suggested by the radical term *pitri*; and afterwards the mother is inferred from the dual number, by assuming, that one term [of two which composed the phrase] is retained.

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4. ***By assuming that one term is retained.***] This is an allusion to the etymology of *pitara* 'parents' from *pitri* 'father,' representing the compound term *mata-pitarau* 'mother and father.' Panini, 1, 2, 70.

* Manu, 9, 35.
† Vide Supra. Sect. 1. § 5.
‡ Achyuta and Srikrishna
§ Manu, 9, 217.
|| Vrihaspati.
¶ Chudamani.

5. Hence [since the members of the series are presented to the understanding in the order here stated *], the argument, that 'the mental apprehension of a series being co-extensive with the oral recital of its component members, being wanting, necessarily precludes apprehension,' must be rejected as inconclusive; for it is not true, that an adequate indication is wanting [being deducible in the manner above stated; § 4] and [the joint succession of father and mother] would contradict the text of Visnnu. **5. An objection obviated.**

6. Thus the father's right of succession has been explained. **6. Conclusion.**

SECTION IV.

On the mother's right of succession.

1. If the father be not living, the succession devolves on the mother: for immediately after propounding the father's right to the estate, Vishnu's text declares, "If he be dead, it appertains to the mother."† **1. The mother inherits after the father.**

2. This too is reasonable: for her claim properly precedes that of the brothers and the rest; since it is necessary to make a grateful return to her, for benefits which she has personally conferred by bearing the child in her womb and nurturing him during his infancy, and also because she confers benefits on him by the birth of other sons who may offer funeral oblations in which he will participate. **2. Her right is founded on reason.**

3. The notion, therefore, that the mother's right should precede the father's, because she is pronounced to surpass him in the degree of veneration due to her, must be rejected. **3. The doctrine of her preferable right is erroneous.**

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3. *The notion that the mother's right should precede the father's is rejected.*] This appears to be levelled against the doctrine maintained by the *Maithila* school, or at least by Vachespati Misra and by the author of the *Vivadachandra*. Srikrishna, in the *Krama-Sangraha*, cites Misra (meaning Vachespati Misra) as affirming that doctrine on the strength of an inverted and erroneous reading of Vishnu's text. (Sect. 1. § 5.)

* Srikrishna.

† Vide Supra, Sect. 1. § 5.

For, if a superior title to veneration were the reason of a right of inheritance, the succession would devolve on the spiritual preceptor before the father, since it is said "Of him who is the natural parent, and him who gives holy knowledge, the giver of the sacred science is the more venerable father:"* and paternal uncles and the rest would inherit in preference to a younger brother or a nephew. Therefore the mother's right of succession is after the father [and before the brothers.†]

4. By the same analogy, the grand-mother inherits after the grand-father.

4. By thus declaring, that the mother's succession takes place after the father of the deceased, and before the father's offspring, the author intimates, that the paternal grand-mother's succession likewise takes place after the grand-father and before the grandfather's offspring. For otherwise [if a different order of succession be assumed,* or if the order be not established;† or that indication be not acknowledged;‡] there is a contradiction between the specified order of succession, "both parents, brothers likewise, &c"§ [and this case which is perfectly analogous.||] Accordingly [since the grandmother's right of succession is in this manner indicated by Yajnyavalkya,¶] Manu says, "And the mother also being dead, the father's mother shall take the heritage."** The meaning is 'being dead, that is, deceased, together with her offspring.'

5. And after brothers and nephew.

5. Here the particle "and," as well as "also," must be joined in construction with both parts of the sentence. Therefore the sense is 'and the mother being dead, the paternal grandmother also may take the heritage.' What then becomes of the brothers and the rest? These persons, including the paternal grandfather, are indicated by the particle "also."

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Because she is pronounced to surpass him.] By the following or similar passages 'A mother surpasses a thousand fathers.'‡ Srikrishna.

5. *Are indicated.*] Copies of Srikrishna exhibit a different reading; *samuchchitah* 'assembled' instead of *suchitah* 'hinted.' The variation does not make a material alteration in the sense.

* Manu, 2. 146. † Srikrishna. ‡ Manu, 2, 145.
* Srikrishna. † Chudamani. ‡ Achyuta.
§ Vide Supra. Sect. 1. § 1. || Chudamani and Srikrishna.
¶ Ragh. on *Dayabhaga*. ** Vide Supra. Sect. 3, § 2.

6. The meaning then of the text [of Yajnyavalkya*] is this: the succession of both parents takes effect, in the order which has been explained, after the descendant of the deceased down to his daughter's son, and before [the father's†] own offspring. Hence the succession of the paternal grandfather and grandmother is thus shown to take place before their own offspring. Accordingly it is not separately propounded in the text of Yajnyavalkya; since the right of the paternal grandfather and grandmother is virtually declared by showing the mother's right of succession. **6. As the mother inherits after the father and before the offspring, so the grandmother inherits after the grand-father and before their progeny.**

7. Thus the mother's right of inheritance has been explained. **7. Conclusion.**

SECTION V.

On the Brother's right of succession.

1. If the mother be dead, the property devolves on the brother: for Vishnu, having declared, that, "If the father be dead, it appertains to the mother," proceeds to say "On failure of her, it goes to the brothers;"‡ and here the pronoun refers to the mother. It appears also from the passage [of Yajnyavalkya] "both parents, brothers likewise,"§ that the brother's succession takes place in the case of the death of both parents. **1. After the mother, the brothers inherit.**

2. It must not be alleged that under the passage above cited, which expresses "brothers likewise and their sons," the brother's son, being declared heir in like manner as the brothers are, shall inherit also next to the mother. **2. Not the brother's son jointly with them.**

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7. *The mother's right of inheritance has been explained.*] On the death of the mother, the residue of the estate devolves on the brother as next heir in the order of succession, and not, like a woman's peculiar property, on her son and daughter: for it is a case of an estate devolving on a woman. (Vide Section 2. § 31.) Chudamani.

* Chudamani.

† Ragh. on *Dayabhaga*.

‡ Vide Supra, Sect. 1. § 5.

§ Sect. 1. § 4.

For the text of Vishnu, declaring that "it goes to the brothers," add "After them, it descends to the brother's sons:" and in this place the pronoun refers to the brothers.

3. It is reasonable; for the brother confers more benefits on the deceased.

3. That too is reasonable: for the brother confers benefits on the deceased owner by offering three funeral oblations to his father and other ancestors, in which the deceased participates; and he occupies his place, as presenting three oblations to the maternal grandfather and the rest, which the deceased was bound to offer; and he is therefore superior to the brother's son, who has not the same qualifications. But deriving his origin from the mother, the brother, though he do possess these qualifications, is inferior to the mother; and his succession, therefore, very properly takes effect after her,

4. As well might parents and brothers inherits together.

4. Besides why may not the word "likewise" be connected with the term "brother?" and thus the parents and brothers may have an equal right of succession; the text being interpreted 'as parents, so do brothers inherit.'

5. It is contradicted by Vishnu, and by Manu.

5. The question, then, must be negatived, as at variance with the text of Vishnu: and the same is to be done in the other instance likewise [of the claims of brother and brother's son.*] So Manu declares, that brothers take the inheritance, not the nephew. "Of him, who leaves no son, the father shall take the inheritance; or the brothers."†

6. The nephew whose father is living, is excluded: how should one, whose father is dead, be admitted.

6. Moreover, why has not the nephew, whose father is living, a right of succession? There is no other reason but this: that one, whose father is living, does not confer benefits, since he is incompetent to offer oblations. If then it be thus settled, [that the order of succession is regulated by the degree in which benefits are conferred,‡] how should a nephew, whose father is deceased, inherit equally with the brother, since he does not confer equal benefits? Accordingly Devala, in a passage before cited [Sect. 1. § 17,] not specifying the brother's son in the series of heirs down to the half brother, comprehending the widow, daughter equal by class, father, mother, brother of the whole blood, and brother of the half-blood, intimates that the succession of nephews and the rest takes place on failure of heirs down to the half-brother.

7. The passage, which pronounces a nephew to be as a son, ["They are all fathers by means of that son;"§] is intended to authorize his presenting a funeral oblation and to establish his right of succession on failure of brothers, [They do not inherit together;||] for that contradicts the

* Achyuta and Srikrishna. † Manu, 9, 185. ‡ Srikrishna.
§ Manu, 9, 182. || Achyuta.

text [of Vishnu*] above cited. Else why should not [his right of succession†] be before the brothers.

8. Therefore the brother alone is heir in the first instance. **8. The brother therefore is sole heir.**

9. Here again, a brother of the whole blood has the first title; under the following text [§ 10]; and, even under the general rule for the brother's succession ("Brothers also" Sect. 1. § 4). The meaning is, that the whole brother shall inherit in the first place: but, if there be none, then the half-brother; for he also is signified by the word brother, being issue of the same father. **9. Fist the brother of the whole blood inherits.**

10 The passage alluded to (§ 9) is as follows: "A reunited [brother] shall keep the share of his reunited [coheir,] who is deceased; or shall deliver it to [a son subsequently] born But an uterine brother [shall thus retain or deliver the allotment] of his uterine relation."‡ This text of Yajnyavalkya also shows, that the term brother is applicable both to the whole and to the half-blood. Else, if it intended only the uterine [and of course whole] brother, the author would not have specified, that "the uterine brother, should retain or deliver the allotment of his uterine relation:" for the whole blood would be signified by the single term "brother." **10 Conformably with a passage of Yajnyavalkya.**

11. Therefore the succession of brothers, whether of the whole or of the half-blood, is declared by the passage before cited ("Both parents, brothers likewise." Sect. 1. § 14. But, by here specifying the uterine relation, the prior right of the uterine (or whole) brother in intimated **11. Proof of the inference.**

12. The succession of the half-brother, between [the whole brother and the brother's son,§] as affirmed by Srikara and Viswarupa, should be acknowledged; for he is inferior to the whole brother, [who presents oblations to six ancestors which the deceased was bound to offer, and **12. The half brother is rightly placed between the whole brother**

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12 *A half-brother, being again associated, &c.*] This obscure text darker even even than the preceding one (§ 10), admits of different interpretations, independently of variations in the reading, which also are numerous. It is necessary therefore for the understanding of the commentary. to exhibit a second version of the text. conformably with the interpretation of Sulapani: "A half-brother, being again associated, may not take the succession of his half-brother: [the whole blood,]

* Chudamani and Srikrishna.

† Srikrishna.

‡ Yajnyavalkya, 2, 139.

§ Srikrishna.

and nephew by Srikrishna and Viswarupa.

also presents three oblations to the father and others, in which the deceased participates; while the half-brother only presents three oblations in which the deceased participates: and he is superior to the nephew, because he surpasses him in the conferring of benefits, since he offers three oblations of which the deceased participates.

13. A further passage of Yajnyavalkya.

13. In answer to the inquiry whether the half-brother, though reunited in coparcenery, be inferior or not to the whole brother, Yajnyavalkya says, "A half-brother, being again associated, may take the succession; not a half-brother, though not reunited: but one united [by blood, though not by coparcenery,] may obtain the property; and not [exclusively] the son of a different mother."*

14. Exposition of it.

14. The meaning of the text is this: A brother by a different mother, but associated again in coparcenery, shall first take the inheritance; not generally any half-brother [whether associated or separated†].' The latter part of the text is in answer to the question, whether, inheriting first, he excludes the whole brother or take the succession jointly, with him? 'the whole brother, though not reunited in parcenery, shall take the heritage,' (here the word whole brother is understood from the preceding sentence:) 'not exclusively the son of a different mother, though reunited.' Or the term "united" may signify whole brother (or united by blood.] Accordingly the text is so read in the citation of it by Jitendriya as a passage of *Vriddha* Yajnyavalkya: and, in that case, the term "associated" is understood from the preceding sentence.

15. An associated half brother inherits with the

15. Therefore the half-brother, who is again associated in coparcenery, shall not take the succession exclusively; but the whole brother [shares it] though not associated.

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though not reunited, shall obtain the property, not, though united, the son of a different mother." Raghunandana, in the *Dayatatwa*, remarks, that the *Mitakshara* and *Ratnakara* concur in the same interpretation with Jimutavahana; from which he also does not substantially differ.

14. *The text is so read.*] The reading here exhibited is *sódaró nanyamatrijah* instead of *sansrishto nanyamatrijah*. The second verse of the stanza is read in the *Kalpataru* 'may not take the wealth of the half-brother,' *nanyodarya-dhanam haret*, in place of *nanyodaryo dhanam haret*, 'a half-brother may not take the wealth.' This reading is condemned by the author of the *Ratnakara* as unauthorized; and Raghunandana, in the *Dayatatwa*, quotes the censurs and apparently concurs in it.

* Yajnyavalkya, 2, 140.

Such is the meaning: and consequently the whole brother, who is not reunited in parcenery, and the half-brother, who is associated, should divide the succession. Accordingly the author has employed the particle "but" [with the connective sense*]. associated wole brother.

16. An objection is stated by Srikara Misra. The maxim, that "the reunited brother shall keep the share of his reunited "coheir," (§ 11) is independent [of other precepts,†] as it applies to the case of reunited half-brothers exclusively; and, in like manner, the maxim that "the uterine [meaning the whole] brother retains the allotment of his uterine relation," (§ 10) bears no reference [to any other rule,] when it is applicable to the case of unassociated whole brothers only: but when there is a half-brother associated and a whole brother unassociated, if the two maxims be applied to this case in consequence of finding both descriptions of brethren, then both maxims take effect with reference to each other. Now it is not right to make the same rule operative with and without reference to another maxim; for this argues variableness in the precept. Thus it is shown [by Jaimini,] in the disquisition on the passage *dwayoh pranayanti*,‡ that the prohibition, relatively to two sacrifices, of the use of the *uttaravedi* or northern altar directed generally for the four sacrifices [in which those two are comprehended,] is not a prohibition [but an exception]; for, if the precept concerning the northern altar be taken with reference to the [denial, implying consequently] an option, in the instance of two sacrifices, and be taken absolutely and without reference to any other maxim in the instance of the two other sacrifices, there would be variableness in the precept. So, in regard to the subject under consideration, the maxims, that "reunited brother shall keep the shares of his reunited coheir," and that "the uterine [or whole] brother shall retain the allotment of his

16. An objection proposed by Srikrishna Misra, founded on reasoning of the *Mimansa*.

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16. *In the disquisition on the passage* dwayoh pranayanti.] This is the ninth (or, according to one reckoning, the seventh) *adhikarana* or topic in the third section of Jaimini's seventh chapter. It is a disquisition on the interpretation of a passage of *Veda*, which directs that a nothern altar be prepared for the *Chaturmasya* sacrifice, and forbids it at two of the four sacrifices comprehended under that designation; namely at the *Vaiswadeva* and *Sunasiriya*: whence it is concluded, that, this being an exception to the more general rule, the

* Srikrishna. † Srikrishna. ‡ *Mimansa*, 7, 3, 9.

uterine relation," (§ 10) are applicable in those cases in which the rules are operative independently of any other: but, if there be a half-brother associated and a whole brother unassociated, the two rules are not applicable in this instance; and it would follow, that no one could take the estate [since there is no special provision in the law for this case.*] Therefore [the true interpretation is, that, in the case stated,] where the associated half brother might be supposed to be heir of his associated parcener, under the rule, that "a reunited brother shall keep the share of his reunited coheir," the maxim that "the uterine [or whole] brother shall retain "the allotment of his uterine relation," serves as an exception to that rule. Thus the half-brother though associated, cannot be supposed to be heir, if there be a brother of the whole blood Then how does the succession go? The whole brother, whether reunited or not reunited in coparcenery, inherits the property.

Srikara's conclusion.

17. Refutation of his objection.

17. That is not congruent: for it is not true, that there is variableness in a precept, merely because two [rules†], which are severally applicable to two [cases†], become applicable in a single instance at the same time.

18. An example of the incongruity of his reasoning.

18. Thus, in respect of the precepts enjoining the votary to bestow his whole wealth as a gratuity in one instance and no gratuity in the other, which are respectively applicable independently of each other, is either the priest doing the functions of *Udgatri*, or the one performing the office of *Pratistotri*, singly stumble [in passing from the one apartment to the other, at the celebration of the sacrifice called

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altar is directed to be employed under that general rule in the remaining two sacrifices only: viz at the *Varuna-praghasa** and *Sakamedha.* The reasoning, introduced into this disquisition, is the ground work of Srikara's objection. See *Mitakshara*, 2 1, 34.

18. *If either the priest doing the functions of* Udgatri.] Among the priests, who officiate at the sacrifice called *Jyotishtoma*, one is termed *Udgatri* and another *Pratistotri*. In the course of the ceremony the priests proceed from one apartment named *Havirdhanim* to another denominated *Havihpavamana* During their progress, if the *Udgatri* happen to stumble the votary is enjoined to bestow his whole wealth in a gratuity. But, if the *Pratistotri* fall, the ceremony is terminated without any gratuity, or with a tribe only; and th sacrifice is to be recommenced.

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* Srikrishna. † Achyuta and Srikrishna., ‡ Ibid.

Jyotishtoma :*] but, if both those priests should stumble at the same time, neither injunction would be applicable; for that would be a variableness in the precept.

19. In like manner, under the precepts, which direct the precept to touch an oblation with the prayer denominated *Chaturhotra* at the full moon, and with the prayer termed *Panchahotra* at the new moon; an oblation of curds consecrated to Indra is understood in the sacrifice named *Upansuyaga*, and an offering of milk consecrated to Indra is similarly understood at the *Agnishomiya* sacrifice; and, both precepts being thus severally applicable in those instances, neither of them would take effect at the *Agneya* sacrifice, since there would be variableness in the precept if both were applied to this case. **19. A further example.**

20. Therefore, the definition of variableness in a precept is its being a positive injunction without reference to any opposition in one instance, and [an eventual one†] with reference to the opposition of a different precept in another instance. Thus, in the example stated (§ 16), the prohibition bears reference to the injunction concerning the altar, expressed in these words "At this sacrifice prepare the *uttara-vedi*" Without opposition to that [injunction‡], it would be no precept Therefore it is a command which bears reference to the injunction respecting the altar. Nor is it in constant opposition to it: for, were it so, the prohibition [as well as the injuntion§] would be useless; since, without the prohibition [and injunction,||] the omission of the altar might be deduced [from the silence of the law]. **20. The instance referred to does not authorize the conclusion.**

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19. *The prayer denominated* Chaturhotra.] Beginning with the words *Prithvi hota.* One, being four times called by Prajapati under the designation of *atman* or soul, replied in the words of this prayer. Hence he is named *chaturhuta* 'four times called,' and, for the sake of mystery, *chaturhotri*; from which the name of the prayer is derived. (Taittiriya Brahmana; and Madhava on *Mimansa*, 3, 7, 4.)

The prayer termed Panchahotra.] It begins with the words *Agnihota.*

In the sacrifice named Upansu-yaga.] Sacrifices are directed to be performed at the full and change of the moon. The *Upansu-yaga* is one of those to be celebrated at full moon, and the *Agnishomiya* at new moon. Curds constitute the oblation at one, and milk at the other of these sacrifices. The *Agneya* appertains to both periods; and both kinds of oblations are to be made on that occasion.

* Srikrishna. † Chudamani. ‡ Srikrishna.
§ Achyuta. || Achyuta.

Therefore, even the injunction concerning the altar is a command which bears relation to the contrary prohibition; but, in regard to two of the periods of sacrifice, it is independent of any other rule. Consequently there is variableness in the precept; and an alternative must be inferred. But, in the case of anything supposed as a mat er of spontaneous option, a prohibition is an absolute forbiddance: for the occasional omission of the act was inferrible without the aid of an express prohibition.

21. A further illustration by an example.

21. Accordingly [since there is variableness in the precept, when a general and a particular rule, or injunction and prohibition, are sometimes applicable in the same instance, but not when two particular rules are so;* or since a prohibition, which is constant, is inferrible with the aid of either injunction or prohibition,†] the passages, which direct, that the *Shodasin* shall be taken, and that it shall not be taken, [at an *Atiratra* sacrifice,] constitute an alternative,

22. An objection obviate

22. But according to the doctrine of those, who affirm, that an alternative is inferred by this reasoning; namely that, since a prohibition implies a previous supposition [to the contrary,] the [negative‡] precept does not obviate the cause; an alternative would be inferrible even in the instance of a prohibition concerning that which was suggested only as a matter of spontaneous choice: for example, the passage which expresses "The priest makes not two [portions of an oblation of liquid butter] when a victim is offered; [nor at the sacrifice with acid asclepias:"] and other similar passage.

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21. *Passages which, direct that the* Shodasin *shall be taken.*] One passage of the *Veda* expresses "At the *Atiratra* take the "*Shodasin*;" another, on contrary provides "At the *Atiratra* take not the *Shodasin*." It is inferred, that an alternative must be admitted; and that the *Shodasin* may optionally be used or not at the ceremony called *Atiratra*. (Jaimini's *Mimansa*, 10, 8, 1.)

Shodasin is a name for a vessal of a particular description. Srikrishna.

It is a wooden bowl employed at sacrifices in which the juice of acid asclepias is drunk.

22. *The passage which expresses "the priest makes not two portions &c."* This passage, with the sequel of it which is here inserted between hyphens, forms the subject of a disquisition in Jaimini's *Mimansa*, (10, 8, 3.)

* Srikrishna. † Achyuta. ‡ Achyuta.

23. A further reason.

23. Moreover, since an effect cannot preclude its own cause, how can there be in one case opposition [which is necessary to constitute an alternative?] for the precepts are not equipollent. But, admitting that such is the nature of prohibition, that it eradicates its own cause; it should eradicate it altogether, for [the precept, which suggested] the previous supposition, is of inferior cogency

24. Another argument refuted.

24. But they affirm, that this prohibition concerns the supposition of something which spontaneous choice may suggest, and is not a forbiddance of anything deduced from a precept. That is an assertion which argues extreme ignorance: for it would follow, that an alternative does not exist; since the practice of what is commanded by precept; and the prohibition of a practice not commanded by precept, cannot be in opposition at the same time. The prohibition too would not be essential to the act of religion, since the practice of something suggested by spontaneous choice is not supposable as an essential part of a religious act.

25. Conclusion against Srikara's reasoning.

25. Therefore, [since the opposite opinion is erroneous,* an alternative is inferred [not in the manner there propesed, but†] according to the reasoning set forth by us [viz. that, if the prohibition be constant, both injunction and prohibition would be unnecessary; and, if the injunction were invariably cogent, the prohibition would be vain.‡] But let that be; for why expatiate?

26. His inference is wrong.

26. As for the remark of the same author, who says, (§ 16) that, 'if there be a half-brother associated and a whole brother unassociated, in which case the half-brother might be supposed to be the heir under the rule, that "a reunited brother shall keep the share of his reunited coheir;" (§ 10) then the maxim, that "the uterine [or

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23. *The precepts are not equipollent.*] The author here alludes to a passage of Gautama "If there be contradiction between equal authorities, an option is inferred."§ Achyuta, Srikrishna, &c.

24. *Cannot be in opposition at the same time.*] 'Or may subsist in the same instance.' For Srikrishna notices two readings of this passage: *Upasanhara-sambhavat* and *Upsanhara-sambhavat*.

* Srikrishna. † Srikrishna. ‡ Srikrishna and Achyuta.

§ Gautama, 1. 4

whole] brother shall retain the allotment of his uterine relation," (§ 10) serves as an exception to that rule.' That is unsuitable, for, in this very case, the rule concerning the reunited coheir might on the contrary serve as an exception to the maxim, that "the uterine [or whole] brother shall retain the allotment of his uterine relation," under which the whole brother might be supposed to be the heir; since there is not in this instance any ground of preference.

27. And the purport of the text, as stated by him.

27. But this author's interpretation of the text "A half-brother being again associated &c." (§ 13), as explanatory of the passage "a reunited brother shall keep the share of his reunited coheir," is quite wrong: for, the intended purport being conveyed by that text, the passage in question would become superfluous.

28. As well as the interpretation of it, is erroneous.

28. Moreover the exposition of the text [by Srikara*]; as signifying 'Let not the half-brother, who is an associated half-brother, take the estate; but the whole brother, (this term is understood,) who is not reunited, shall positively take it;' a son of a different mother, though united, shall not inherit;' is also erroneous, for the same term 'half-brother' in the first part of the text, is needlessly repeated; and the phrase 'son of a different mother,' in the latter part of it, becomes superfluous; and the particle *api* is taken in the sense of positively.

29. His exposition leaves a case unprovided for.

29. Besides, under the interpretation of the passage concerning the uterine [or whole] brother as an exception to the claim of the associated half-brother if a whole brother unassociated exist: and its consequent inapplicableness to the case of a whole brother and half-brother both unassociated; these would have an equal right of succession [under the general maxim, that brothers shall inherit; section 1. § 4 † since no distinction is specified: ‡] or else the property would belong to neither of them [if the general rule be explained by the particular one.§]

30. Or else the objection

30. But, if the passage concerning the uterine [or whole] brother be applicable to this case also, [taking the

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30. *At a sacrifice with the* Soma *plant.*] It is a general rule, that an altar is to be used at sacrifices in which the *Soma* or *Asclepias acida* is employed. An altar is also directed to be provided at sacriffces

* Srikrishna and Achyuta † Achyuta. ‡ Srikrishna.
§ Srikrishna and Achyuta.

term "uterine" as intending such a brother generally, whether associated or unassociated,*] then the objection of variableness in the precept may be retorted on you; for the passage, concerning the reunited brother, bears reference to opposition in one case, [in that of the associated half-brother and unassociated whole brother;†] and bears no reference to opposition in another case, [in that of a whole brother and half-brother both unassociated;‡] in like manner as it is declared, that the general rule for preparing the *vedi* or altar at a sacrifice with the *Soma* plant, must be understood as applicable to sacrifices in which the use of the altar has not been otherwise directed; since there would be variableness in the precept, if it operate in the case of the *Dikshiniya* and other similar sacrifices, in bar of a command forbidding the altar suggested by the extension of a rule [concerning sacrifices celebrated at the full moon,] but in other instances operate without bar to anything else. **alleged by him may be retorted.**

31. But, according to our interpretation, there is no variableness in the precept, even as that is understood by Srikara: for the passages concerning the reunited brother and the uterine [or whole] brother (§ 10) are relative severally to different cases; and that regarding "a half-brother again associated" (§ 13) declares the equal participation of a whole brother unassociated and a half-brother associated. Thus the meaning of the first part of that text is, 'a half-brother, being reunited in coparcenery, shall take the succession, although a whole brother not reunited exist; but a half-brother, who is not reunited, shall not inherit.' The latter part of the text is in answer to the question, does not the whole brother inherit in that case? 'Though not reunited, the whole brother (this term is understood) shall take the heritage; and not exclusively the son of a different mother who is again associated. But it shall be taken and shared by both.' Thus the alleged variableness in the precept is obviated. **31. It is not a valid objection to the proposed construction.**

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celebrated at the full of the moon. By extension of this rule to the *Dikshiniya*, which is one part of the sacrifics to be celebrated at that period, use of the altar is deducible from this as well as from the general rule above-mentioned. Now, since the injunction is unnecessary as regarding what is otherwise known, it is supposed, that, to give operation to the injunction in this case, it must be taken as a bar to the inference deducible from an extension of a different rule. Hence it is considered liable to the objection of variableness.

* Srikrishna. † Srikrishna. ‡ Srikrishna.

32. A passage of Manu confirms the interpretation.

32. So Manu likewise shows the same rule of succession. "His uterine brothers and sisters, and such brothers as were reunited after a separation, shall assemble together and divide his share equally."*

33. Exposition of his text and refutation of a contrary inference from it.

33 Reciprocation being indicated by the plural number, in the term "uterine brothers," as respecting these exclusively; and in the words "brothers reunited," as relating to the half-brothers; the words "assemble together" are properly employed to mark association of both [descriptions of brethren;†] for they would otherwise be unmeaning terms. Therefore it is from mere ignorance that it has been asserted, that both [do not inherit together,‡] because reciprocation is not expressed by the text. Moreover, since the text exhibits the conjuntive particle "and," in the phrase "and such brothers as were reunited &c." and the rule [of grammar] expresses, that a conjunctive compound is used when the sense of the conjunctive particle is denoted,§ the assertion, that reciprocation is not expressed by the text, would imply, that even the conjunction does bear that sense [viz. the sense of reciprocation ||]

34. The whole brother inherits in preference to a half brother, if neither be reunited. A passage of *Vrihat* Manu confirms this.

34 Therefore, if whole brothers and half brothers only [not reunited brothers of either description ¶] be the claimants, the succession devolves exclusively on the whole brothers. Accordingly *Vrihat* Menu says, "If a son of the same mother "survive, the son of her rival shall not take the wealth. This rule shall hold good in regard to the immovable estate. But, "on failure of him, [the half brother] may take the heritage."

35. It relates to divided immovables. A corresponding passage of Yama.

35. This rule shall hold good in regard to the immovable estate.] This rule is relative to divided immovables. For, immediately after treating of such [property,] Yama says, "The whole of the undivided immoveable estate appertains to all the brethern; but divided immovables must on no account be taken by the half brother."

36. The succession devolves on

36. All the brethren.] Whether of the whole blood or of the half blood. But, among whole brothers, if one be

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36. *All the brethren*] Effects other than immovables go to the brothers of the whole blood whether separated or unseparated. Ragh. *Dayatatwa.*

* Manu, 9, 212 † Srikrishna. ‡ Achyuta.
§ Panini, 2, 2. 29. || Achyuta and Srikrishna. ¶ Ibid.

reunited after separation, the estate belongs to him. If an unassociated whole brother and reunited half brother exist, it devolves on both of them. If there be only half brothers, the property of the deceased must be assigned in the first instance to a reunited one ; but, if there be none such, then to the half brother who is not reunited.

the reunited whole brother in preference to one not re-united.

37. Accordingly the plural number is employed in the term "brothers," (Sect. 1. § 4) for the purpose of indicating the succession of all descriptions of them, in the order here stated. Else it would be unmeaning.

37. Reason of the use of the plural number in a passage before cited (Sect. 1. § 4.)

38. The text, "a reunited [brother] shall keep the share of his reunited coheir," (§ 10) is intended to provide a special rule governed by the circumstance of reunion after separation, and applicable to the case where a number of claimants in an equal degree of affinity occurs.

38. The passage under consideration (§ 10) provides a special rule.

39. Hence, if there be competition between claimants of equal degree, whether brothers of the whole blood, or brothers of the half blood, or sons of such brothers, or uncles, or the like, the reunited parcener shall take the heritage: for the text does not specify the particular relation; and all these relations] were premised in the preceding text [Sect. 1. § 4*; and a question arises in regard to all of them. Therefore the text must be considered as not relating exclusively to brothers.

39. It is applicable to nephews and uncles, as well as to brothers.

40. Thus the brother's right of succession has been explained.

40. Conclusion.

SECTION VI.

On the Nephew's right of succession,—and that of other heirs.

1. On failure of brothers, the brother's son is heir: for the text of Vishn W, having declared "it goes to the brothers," proceeds "After them it descends to the brother's sons."†

1. After brothers, nephews inherit.

2. Among these, the succession devolves first on the

2. The whole blood

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2. *For the text expresses "An uterine brother" &c.*] Although

* Vide Sect. 2. § 27. † Srikrishna. ‡ Sect. 1. § 5.

first, and then the half blood.

son of a uterine [or whole] brother; but, if there be none, it passes to the son of the half brother. For the text expresses, "An uterine [brother] shall retain or deliver the allotment of his uterine relation" (Sect. 5. § 10). Indeed the son of the half brother being a giver of oblations to the father of the late proprietor, together with his own grandmother, to the exclusion of the mother of deceased owner, is inferior to a son of a whole brother [who is a giver of oblations to the grandfather in conjunction with mother of the deceased.*]

3. Step-mothers do not participate, like the natural mother, in the funeral oblations.

3. Nor can it be pretended that the step-mother, grandmother and great-grandmother take their places at the funeral repast, in consequence of [ancestors being deified†] with their wives: for the terms "mother" [grandmother and great-grandmother‡] &c. [in such texts as the following§] bear their original sense of 'his own natural mother,' 'father's natural mother and 'grandfather;' natural mother;' and it is by those terms that they are described as taking their places at the funeral repast. Thus it is said, "A mother "tastes with her husband the funeral repast consisting of oblations to the manes; and the paternal granndmother with her husband; and the paternal grandmother with hers." But the introduction of step-mothers and the rest to a place at the periodical obsequies, is expressly forbidden. Thus the sage declares, "Whosoever die, whether man or woman, without male issue, for such person shall be performed funeral rites peculiar to the individual, but no periodical obsequies."

4. It would be a contradiction.

4. Besides, the command for the funeral repast in honour of ancestors with their wives, is of invariable exigency; as it is universally acknowledged: but, since there are not step-mothers in every instance, the precept must relate to the natural mother; for the association of the variable and invariable exigency of the same command would be a contradiction.

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there be no text which declares the right of a nephew of the whole blood before a nephew of the half-blood; yet, under the passage cited, which shows, that in the case of brothers, the whole blood excludes the half-blood, it is reasonable, that the son of an excluded person should be debarred by the son of the person who excludes him. Srikrishna and Achyuta.

* Srikrishna.

† Srikrishna and Achyuta.

‡ Srikrishna and Achyuta.

§ Srikrishna.

5. Since the paternal uncle, like the nephew of the whole blood, offers two oblations, which the owner was bound to present, to two ancestors with their wives, should not the succession devolve equally on the uncle and nephew of the late preprietor? The answer is, the paternal uncle is indeed a giver of oblations to the grandfather and great grandfather of the proprietor; but the nephew is giver of two oblations to two ancestors including the owner's father who is principally considered. He is therefore a preferable claimant, and inherits before the uncle.

5. The paternal uncle has not equal pretensions with the nephews.

6. Accordingly [since superior benefits are conferred by such a successor,*] the brother's grandson excludes the paternal uncle; for he is a giver of oblations to the deceased owner's father who is the person principally considered.

6. Even the brother's grandson inherits before him.

7. But the brother's great-grandson, though a lineal descendant of the owner's father, is excluded by the paternal uncle: for he is not a giver of oblations, since he is distant in the fifth degree. Thus Manu says, "To three must libations of water be made, to three must oblations of food be presented; the fourth in descent is the giver of these offerings: but the fifth has no concern with them."† By this passage the fifth in descent is debarred.

7. But the brother's great-grandson is excluded, as too remote.

8. But, on failure of heirs of the father down to the greatgrandson, it must be understood, that the succession devolves on the father's daughter's son [in preference to the uncle;*] in like manner as it descends to the owner's daughter's son [on failure of the male issue, in preference to the brother.]

8. The sister's son also inherits before the uncle.

9. The succession of the grandfather's and great-grand father's lineal descendants including the daughter's son, must be understood in a similar manner, according to the proximity of the funeral offering: since the reason stated in

9. So the daughter's son of the grandfather

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8. *In like manner as it descends to the daughter's son.*] Although the succession ought previously to devolve on the sister, as it goes to the daughter before the daughter's son, nevertheless she is excluded from the succession because she is no giver of oblations at periodical obsequies; being disqualified by sex. But the daughter's right of inheritance before the daughter's son takes effect under the special provisions of an express text. (Sect. 2. § 14.) Srikrishna.

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* Srikrishna.

† Manu, 9, 186. Vide Supra, Sect. 1. § 40.

‡ Achyuta and Srikrishna

and great grandfather are the last heirs in those several lines.

the text "for even the son of the daughter delivers him in the next world, like the son of a son,"† is equally applicable; and his father's or grandfather's daughter's son, like his own daughter's son, transports his manes over the abyss, by offering oblations of which he may partake.

10. Manu and Yajnyavalkya have not specified, but only indicated, their

10. Accordingly Manu has not separately propounded their right of inheritance: for they are comprehended under the two passages, "To three must libations of water be made &c."‡ and "To the nearest kinsman (*sapinda*) the inheritance next belongs"§ Yajnyavalkya likewise uses the term "gentiles" or kinsmen (*gotraja*)‖ for the purpose of indicating the right of inheritance of the father's and grandfather's daughter's son, as sprung from the same line, in the relative order of the funeral oblation; and for the further purpose of excluding females related as *sapindas*, since these also sprung from the same line.

11. In general a female is incapable of inheriting. But a widow, a daughter and mother are specially excepted.

11. Accordingly [since they are excluded,*] Baudhayana, after premising "A woman is entitled," proceeds "not to the heritage; for females, and person deficient in an organ of sense of member, are deemed incompetent to inherit." The construction of this passage is 'a woman is not entitled to the heritage.' But the succession of the widow and certain others [viz the daughter, the mother and the paternal grandmother†,] takes effect under express texts, without any contradiction to this maxim.

lure of the paternal line, the property devolves on maternal kindred.

12. On failure of any lineal descendant of the paternal great-grandfather, down to the daughter's son, who might present oblations in which the deceased would participate; to intimate, that, in such case, the maternal uncle shall inherit in consequence of the proximity of oblations, as presenting offerings to the maternal grandfather and the rest which the deceased was bound to offer, Yajnyavalkya employs the term "cognates" (*bandhu*.)‡ But Manu has indicated it only by a passage declaratory of succession according to the nearness of the oblation.

ANNOTATIONS.

11. *Females are deemed incompetent to inherit.*] Whether bearing the same or a different family name. Therefore the son's daughter has no right of inheritance. Ragh. on *Dayabhaga*.

* Manu, 9, 139. † Manu, 9, 186.
‡ Manu. 9. 187. Vide Infra § 17 and 21. § Vide Sect. 1 § 4.
‖ Srikrishna. ¶ Achyuta and Srikrishna ** Vide Sect. 1. § 4.

13. For the property should be so applied to the spiritual benefit of the deceased conformably with texts of Vrihaspati and Apastamba

13. Since the maternal uncle and the rest present three oblations to the maternal grandfather and other ancestors, which the deceased was bound to offer, therefore the property should devolve on the maternal uncle and the rest : for it is by means of wealth, that a person becomes a giver of oblations Two motives are indeed declared for the acquisition of wealth one temporal enjoyment, the other the spiritual benefit of alms and so forth Now, since the acquirer is dead and cannot have temporal enjoyment, it is right that the wealth should be applied to his spiritual benefit. Accordingly Vrihaspati says, "Of property which descends by inheritance, half should carefully be set apart for the benefit of the deceased owner to defray the charges of his monthly, six monthly and annual obsequies" So Apastamba ordains "Let the pupil or the daughter apply the goods to religious purposes for the benefit of the deceased." By saying "to defray the charges of his monthly &c. obsequies" his participation, and by directing "religious purposes" his spiritual benefit, are stated as reasons. Accordingly the sage says, "Wealth is useful for alms and for enjoyment." It is reasonable, therefore, that on failure to kindred, who might present oblations in which he would participate, the succession should devolve on the maternal uncle and the rest, who present oblations which he was bound to offer.

14. After the kindred on the mother's side, the distant kinsman is heir, according to a passage of Manu.

14. Accordingly [since the succession devolves on heirs down to the maternal uncle and the rest, in the order of oblations in which the deceased may participate, or which he was bound to offer,*] Manu, considering that purport as sufficiently indicated by the two passages above cited, "To three must libations be made &c ", "To the nearest kinsman the inheritance next belongs ", (vide § 7 and 17) proceeds thus, "Then, on failure of such kindred, the distant kinsman shall be the heir, or the spiritual preceptor, or the pupil."†

15. He is the descendant of the grandfather's grandfather or remoter ancestor. After these the preceptor or the pupil.

15. The distant kinsman *(sakulya)* is the descendant of the paternal grandfather's grandfather or other remote ancestor Such relatives are denominated *Samanodakas* Their order of succession is in the series as exhibited. On failure of such heirs [down to the *Samanodaka*‡] the succession devolves on the spiritual preceptor, the pupil &c.

16. Such must be Manu's intention.

16. Otherwise [if the text of Manu do not intend the maternal uncle and the rest,§] how is the admission of maternal uncles and others affirmed without contradiction to Manu ? Therefore this meaning is intended by him in the passage above cited ; and there is no contradiction.

* Srikrishna.
† Manu, 9 178. Vide Infra, § 21.
‡ Srikrishna.
§ Srikrishna.

17. As appears from several passages.

17. Accordingly, having declared, while treating of inheritance, "To three must libations of water be made ; to three must oblations of food be presented ; the fourth in descent is the giver of those offerings . but the fifth has no concern with them ;"* he adds To the nearest kinsman *(sapinda,)* the inheritance next belongs,"† for the purpose of showing, that the fifth in descent, not being connected even by a single oblation, is not the heir, so long as a person connected by a single oblation, whether sprung from the father's or the mother's family, exists. Otherwise, since the relation of *sapinda* has been declared by a distinct text, ("Now the relation of *Sapinda* or men connected by the "funeral cake, ceases with the seventh person ;")‡ and the right of the fourth in descent to inherit is declared by the text "To the nearest kinsman the inheritance next belongs ;"§ the passage which begins, "To three must libations be made &c"‖ would be superfluous It cannot be said, that it is intended to direct the celebration of the funeral repast in honour of three ancestors : for it is inserted in the midst of a disquisition concerning inheritance ; and the funeral repast is ordained by a different text. Thus Manu says, "Let the householder honour the sages by duly studying the *Veda* ; the gods by oblations to fire as ordained by law ; the manes, by pious obsequies ; men, by supplying them with food : and spirits, by gifts to all animated creatures."¶

18. Nearness of kin is not by birth.

18. Nor should it be pretended, that the text [of Manu "To the nearest *sapinda* &c."§ 17**] is intended to indicate nearness to kin according to the order of birth, and not according to the presentation of offerings : for the order of birth is not suggested by the text. But Manu, declaring, that oblations of food, as well as libations of water, are to be offered to three persons, and that the fourth in descent is a giver of oblations, but neither is the fifth in ascent a receiver of offerings nor the fifth in descent a giver of them, thus declares nearness of kin, and shows that it depends on superiority of [benefits by††] presentation of oblations.

19. The kindred on the mother's side therefore inherit.

19. Therefore those that having sprung from the same family are of different *Gotra*, such as his own daughter's son or his father's daughter's son and the like, or those sprung from a differentt family, such as the maternal uncle and the like, because of their having to offer the *Traipurushika Pinda* which goes to the family

* Manu, 9. 186. † Manu, 9. 187. ‡ Manu, 5. 60.
§ Manu, 9. 187. ‖ Manu, 9. 186. ¶ Manu, 3. 81.
** Achyuta. †† Achyuta.

of the father or of the mother of the deceased owner, being thus connected by the relationship of offering Pinda to one and the same person are Sapindas The text "to three" (must libations &c § 7) is intended to declare the right of these persons and the following text (to the nearest *Sapinda* § 7) is intend.d to discriminate them according to proximity (*a*).

20. The order of succession then must be understood in this manner: on failure of the father's daughter's son or other person who is a giver of three oblations (presented to the father &c) which the deceased shares or which he was bound to offer, the succession devolves in the next place on the maternal uncle and others [namely his son or grandson *] who offer oblations to the maternal grandfather and the rest which the deceased was bound to present. **20. On failure of paternal kindred connected by funeral oblations.**

21. But on failure of kin in this degree, the distant kinsman (*sakulya*) is successor. For Manu says, "Then, on failure of such kindred, the distant kinsman shall be the heir, or the spiritual preceptor, or the pupil."† The distant kinsman (*sakulya*) is one who shares a divided **21 After them the distant kindred.**

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20. *The succession devolves in the next place on the maternal uncle &c*] On failure of persons who are givers of oblations in which the deceased may participate, the kinsman [that is, the maternal grandfather, or maternal uncle, and so forth] is heir. Here also, as in the instance of the father and paternal ancestors, if the maternal grandfather be living, he is heir, but, on failure of him, the maternal uncle and other maternal kindred in order, for they present oblations, which the deceased was bound to offer Ragh *Dayatatwa*

21. *The distant kinsman is one who shares a divided oblation*] The *saculya* is of two descriptions, descending and ascending The first intends the son of the great-grandson and the rest to the third degree

(*a*) The translation given below of Colebrooke is imperfect. Therefore a kinsman, who is allied by a common oblation as presenting funernal offerings to three persons in the family of the father, or in that of the mother of the deceased owner, such kinsman having sprung from his family though of different male descent, as his own daughter's son or his father's daughter's son, or having sprung from a different family as his maternal uncle or the like, [is heir †] and the text ("To three must libations of water be made" &c. § 7) is intended to propound the succession of such kinsman, and the subsequent passage ("To the nearest *sapinda* &c." § 7) must be explained as meant to discriminate them according to their degrees of proximity.

* Srikrishna.

† Manu, 9. 187. Vide Supra. § 14.

oblation (Sect. 1. § 37) as the grandson's grandson or other descendant within three degrees reckoned from him; or as the offspring of the grandfather's grandfather or other remoter ancestor

22 First the grandson's grandson & his descendants. Then the descendants of the grandfather's grandfather &c.

22 Among these claimants [whether ascending or descending*], the grandson's grandson and the rest are nearest, since they confer benefits by means of the residue of oblations which they offer [These descendants are therefore heirs.†] On failure of such, the offspring of the paternal grandfather's grandfather inherits in right of oblations presented to the paternal grandfather's grandfather and other ancestors who are sharers of the residue of oblations which the deceased was bound to offer

23 Next remote kindred.

23. If there be no such distant kindred, the *Samanodakas*, or kinsmen allied by a common libation of water, must be admitted to inherit, as being signified by the term *sakulya* [conformably with Baudhayana's explanation of it · Sect 1. § 37 ‡]

24. After these, the preceptor, pupil and fellow student.

24 On failure of these, the spiritual preceptor [or instructor in knowledge of the *Veda*§] is the successor In default of him, the pupil [or student of the *Veda*] is heir : by the text of Manu, "or the pupil" (§ 14) On failure of him likewise, the fellow student; by the text [of Yajnyavalkya] "a pupil and a fellow student." (Sect. 1. § 4)

25. Then persons bearing the same family name; and descendants from the same patriarch.

25. In default of these claimants, persons bearing the same family name (*gotra*) are heirs On failure of them, persons descended from the same patriarch are the successors. For the text of Gautama expresses "Persons allied by funeral oblations, family name and patriarchal descent, shall share the heritage [of a childless man, or his widow shall partake "||]

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in the descending line, the order signifies the great-grandfather's father and other ancestors to the third degree in the ascending line Srikrishna *Krama-Sangraha*.

25. *Or his widow shall partake*] The passage, as cited in the text, was incomplete the compiler having omitted the close of it, which is declaratory of the widow's participation The defect of the quotation has been supplied As the original passage stands in Gautama's institutes, it is not easily reconcilable with Jimutavahana's doctrine of the widow's preferable title.

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* Srikrishna. † Srikrishna ‡ Achyuta. § Srikrishna.
|| Gautama. 28. 29.

26. Next *Brahmanas*

26. On failure of all heirs as here specified, let the priests take the estate Thus Manu says, "On failure of all those, the lawful heirs are such *Brahmanas* as have read the three *Vedas*, as are pure in body and mind, as have subdued their passion Thus virtue is not lost"* Virtue, which would be extinguished by the ample enjoyment [of its reward,] but is renewed by the acquisition of fresh merit through the circumstance of the wealth devolving on *Brahmanas*, is not lost Here also the author indicates the appropriation of the property for the benefit of the deceased.

27. Lastly the king

27 In default of them, the king shall take the wealth· excepting however the property of a *Brahmana* A failure of descendants from the same patriarch and of persons bearing the same family name, as well as of *Brahmanas*, must be understood as occurring when there are none inhabiting the same village else an escheat to the king could never happen.

28. Unless this doctrine be admitted, the maternal uncle and the rest, not being specified, would have no right of inheritance.

28. If the right of the father's daughter's son, and of the maternal uncle and the rest, be not considered as intended by the text. "To three must libations of water be made &c (§ 7) they would have no right of succession, since they have not a place among distant kinsmen and others, whose order of succession is specified Nor can this be deemed an admissible inference, since they are indicated by Yajnyavalkya under the terms "Gentiles and cognates" (*a*) (Sect. 1 § 4) Consequently it must be affirmed, that they have been indicated by Manu in the text (§ 7) Therefore such order of succession must be followed, as will render the wealth of the deceased most serviceable to him.

29 On the same principle of inheritance in right of benefits conferred, is the equal succession of the

29 Accordingly [since inheritance is in right of benefits conferred, and the order of succession is regulated by the degree of benefit,†] the equal right of the son, the son's son and the son's grandson, is proper for their equal pretensions are declared in the text, "By a son a man conquers world," &c. (Sect. 1 § 31) and in other similar passages. They equally present oblations to the deceased. Hence also the grandson and great-grandson, whose fathers are

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26. *Virtue which would be extinguished &c.*] This differs from Kullucabhatta's interpretation, which makes the passage relate to funeral rites "thus the rites of obsequies cannot fail"

* Manu, 9. 188 † Srikrishna.

(*a*) Bandhu is the word in the original Jimutaxvabana admitte the right of Bandhus Ed.

son, grandson and great-grandson justified; as well as the exclusion of the two last, if their fathers be living.

living, do not inherit, for they do not confer benefits, since they are forbidden to celebrate the periodical obsequies by skipping the surviving father; the law providing, that oblations shall not be presented, overpassing a living person. Otherwise these [sons and grandsons, whose fathers are living,†] would have the same right of inheritance with those whose fathers are deceased. Or the son alone would inherit as nearest of kin in the order of birth, to the exclusion of the son's son and son's grandson. Neither is there any express text declaratory of the equal rights of three descendants, son, grandson and great-grandson. Therefore it must be inferred, that the parity in their right of inheritance arises from the equal benefits conferred by them.

30. In every case the wealth is appropriated in the manner most serviceable to the deceased.

30, In like manner the appropriation of the wealth of the deceased to his benefit, in the mode which has been stated, should in every case be deduced according to the specified order

31. Manu and the rest assent to this doctrine.

31. This doctrine, [that inheritance is deducible from reasoning and founded on services rendered,*] must be admitted to have the assent of Manu and other sages: for there can be no other purposes of propounding, under the head of inheritance, the superior benefits derived from sons and the rest; and the exoneration of the father from debt is stated as a reason for the son's inherting: ["By the eldest son a man is exonerated from debt to his ancestors; therefore that son is entitled to take the heritage. (Sect. 1 §32) redemption also is exhibited as a cause of succession to property: (Even the son of a daughter delivers him in the next world like the son of a son,†) and there is no other reason for the equal right of inheritance of three descendants, the son and the rest, besides their deliverance [of their ancestors,] and the passage, "To three must libations of water be made &c." [§ 7] would be unnecessary [if such were not the purpose;]§ and the exclusion of persons impotent, degraded, blind from their birth and so forth, is an apposite rule as founded upon their rendering no services: [but not as

ANNOTATIONS.

31. *Before whom an heir intervenes*] As the grandson or great-grandson, whose own father is living, and so forth. Srikrishna

* Achyuta and Srikrishna † Srikrishna.

‡ Manu, . 9, 139. Vide Supra. C. 4. Sect. 2. § 10. § Srikrishna.

grounded on the mere letter of the law:*] and it is troublesome to establish an assumed precept for debarring those before whom an heir intervenes; [as must be done upon any other supposition:] and it is reasonable, that the wealth which a man has acquired, should be made beneficial to him by appropriating it according to the degree in which services are rendered to him

32. This doctrine, as illustrated by the irreproachable Udyota,† should be respected by the wise.

32. It is maintained by Udyota.

33. If the learned be yet unsatisfied [with relying on reason‡ for the ground of the law of inheritance,] this doctrine may be derived from express passages of law. Still the same interpretation of both texts [of Manu, §7 and 17] must be assumed. But let this be What need is there of expatiating?

33. And is consistent with the letter of the law.

34 Excepting the property of a *Brahmana* let the king take the wealth [on failure of heirs] So Manu directs The property of a *Brahmana* shall never be taken by the king: this is a fixed law. But the wealth of the other classes, on failure of all [heirs,] the king may take."§ By the term all is signified every heir including the *Brahmana* [§26].

34. The king takes the escheat on failure of heirs, excepting the wealth of a priest. So Manu declares.

35. The goods of a hermit, of an ascetic, and of a professed student, let the spiritual brother, the virtuous pupil and the holy preceptor take. On failure of these, the associate in holiness, or person belonging to the same order, shall inherit. Thus Yajnyavalkya says, The heirs of a hermit, of an ascetic and of a professed student, are, in their order, the preceptor, the virtuous pupil, and the spiritual brother and associate in holiness."||

35 Special rule of succession in the instance of religious orders: conformably with a passage of Yajnyavalkya.

36 Goods, such as they may happen to possess, should be delivered in the inverse order of this enumeration. The student must be understood to be a professed one: for,

36. Exposition of the text.

ANNOTATONS.

35 *The associate in holiness or person belonging to the same order.*] This is according to the author's apprehension of the meaning of the text. but in fact, 'associate in holiness' is an epithet 'of spiritual brother' Srikrishna

36 *Goods such as they may happen to possess*] Viz the hoard of wild rice or other property of a hermit; the gourd, clout, and other effects of an ascetic, and the books, clothes and other goods of a student.

* Srikrishna † Vide Supra. C 2 § 9 ‡ Achyuta and Srikrishna.
§ Manu, 9. 89. || Yajnyavalkya, 2 138.

abandoning his father and relations, he makes a vow of service and of dwelling for life in his preceptor's family. But the property of a temporary student would be inherited by his father and other relations.

37. Conclusion. 37. Thus has the distribution of the wealth of one, who leaves no male issue, been explained.

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Recapitulation by Srikrishna Tarkalankara.

The order of succession to the property of a deceased man, is this, First the son inherits, on failure of him the son's son: in his default the son's grandson. However a grandson whose father is dead, and a great-grandson whose father and grandfather are deceased, inherit at once with the son. On failure of descendants down to the son's grandson, the wife inherits: and she having received her husband's heritage, should take the protection of her husband's family or of her father's and should use her husband's heritage for the support of life, and make donations and give alms in a moderate degree, for the benefit of her deceased husband but not dispose of it at her pleasure, like her own peculiar property. If there be no widow, the daughter inherits, in the first place, a maiden daughter, or on failure of such, an affianced daughter but, if there be none, a married daughter and she may be one, who has, or is likely to have, male issue, for both these inherit together but one who is barren, or who is become a widow having no male issue, is incompetent to inherit. On failure of the married daughter, a daughter's son is heir. If there be none, the father succeeds, or if he be dead the mother. If she be deceased, a brother is the successor. In the first place, the uterine (or whole) brother, if there be none a half brother. But, if the deceased lived a renewed coparcenery with a brother, then, in case of all being of the whole blood, the associated whole brother is heir in the first instance, but, on failure of him, the unassociated whole brother. So, in case of all being of the halfblood, the associated half brother inherits in the first place, and on failure of him the unassociated half brother. But, if there be an associated halfbrother and an unassociated whole brother, then both are equal heirs. In default of brothers, the brother's son is the successor. Here also a nephew of the whole blood inherits in the first instance, and on failure of such, the nephew of the half blood; but, in case of reunion of coheirs, and on the supposition of all being of the whole blood, the associated son of the whole brother is in the first place heir, and, on failure of him, the unassociated nephew of the whole blood; or, on the supposition of all being of the halfblood, the associated nephew of the halfblood, is the first heir, and, on failure of him, the unassociated nephew. But, if the son of the whole brother be separate, and the son of the half brother associated, both inherit together, like brothers in similar circumstances. If there be no brother's son, the brother's grandson is heir. Here likewise the distinction of the whole blood and half blood, and that of reunited parcenery and disjoined parcenery, must be understood. On failure of the brother's grandson, the father's daughter's son is the successor: whether he be the son of the sister

of the whole blood, or the son of a sister of the half blood.* If there be none, the father's own brother is heir, or, in default of such, the father's half brother. On failure of these, the succession devolves in order on the son of the father's whole brother, on the son of his half brother, on the grandson of his whole brother, and on the grandson of his half brother. In default of these, the paternal grandfather's daughter's son inherits, and, in this instance also whether he be son of the father's own sister or son of the father's half sister and, in like manner, [the whole blood and half blood inherit alike] in the subsequent instance of the succession devolving on the son of the great-grandfather's daughter. On failure of these heirs, the paternal grandfather is the successor. If he be dead, the paternal grandmother inherits. If she be deceased, the paternal grandfather's own brother, his half brother, their sons, and grandsons, and the great-grandfather's daughter's son are successively heirs. On failure of all such kindred, who present oblations in which the deceased owner may participate, the succession devolves on the maternal uncle,† and the rest, who present oblations which the deceased was bound to offer. In default of these, the heritage goes to the son of the owner's maternal aunt. Or, failing him, it passes successively to the son and grandson of the maternal uncle.‡ On failure of these, the right of inheritance accrues to the remote kindred in the descending line, who present the residue of oblations to ancestors with whom the deceased owner may participate, namely to the grandson's grandson and other descendants for three generations in succession. In default of these, the inheritance returns to the ascending line of distant kindred, by whom oblations are offered, of which the deceased owner may partake, namely, to the offspring of the paternal grandfather's grandfather and other ancestors, in the order of proximity. On failure of these, succession devolves on the *Samanodakas* or kindred allied by a common oblation of water. In default of them, the spiritual preceptor is heir, or, if he be dead, the pupil, or failing him, the fellow student in theology. If there be none, the inheritance devolves successively on a person bearing the family name, and on one descended from the same patriarch, in either case being an inhabitant of the same village. On failure of all relatives as here specified, [the property devolves on *Brahmanas* learned in the three *Vedas* and endowed with other requisite qualities § and, in default of such,] the king shall take the escheat, excepting however the property of a *Brahmana*. But the priests, who have read the three *Vedas* and possess other requisite qualities, shall take the wealth of a deceased *Brahmana*.

So the goods of an anchoret shall devolve on another hermit considered as his brother and serving the same holy place. In like manner the goods of an ascetic shall be inherited by his virtuous pupil; and the preceptor shall obtain the goods of a professed student. But the wealth of a temporary student is taken by his father or other heir. Such is the abridged statement of the law of inheritance. Srikrishna.

* The son of the proprietor's own sister, and the son of his half sister, have an equal right of inheritance, according to Acharya, Chudamani, Srikrishna, *Krama-sangraha*.

† The maternal grandfather inherits before his son the maternal uncle, according to the *Dayatatwa* of Raghunandana and *Krama-sangraha* of Srikrishna.

‡ See the note subjoined to this summary.

§ *Krama-sangraha.*

Remark by the Translator.

The son and grandson of the maternal uncle ought to precede the son of the maternal aunt, by the analogy of the rule of inheritance on the father's side. But three collated copies of Srikrishna's commentary agree in stating the order of succession as here exhibited. On the other hand the same author, in his original treatise on inheritance entitled *Krama-sangraha*, exhibits the succession on the mother's side in the following order 'first the maternal grandfather; next the maternal uncle, then the maternal uncle's son, after him, the maternal uncle's son's son, and subsequently the maternal grandfather's daughter's son [on failure of these, the maternal great-grandfather, his son, his son's son his son's grandson, and his daughter's son again on failure of these the maternal grandfather's grandfather, his son, his son's son, his son's grandson and his daugther's son *]' It must be remarked, however, that the text of Srikrishna's treatise according to one copies of it, interposes the mother's sister's son between the maternal uncle and his son. But that is an evident mistake, for the mother's sister's son is the same with the maternal grandfather's daughter's son who is placed by the same author after the maternal uncle's grandson.

The author of the *Daya-nirnaya* states, the succession differently viz. 'First the maternal uncle, then the maternal uncle's son, next the maternal grandfather, after him, the mother's sister's son, subsequently the maternal uncle's son's son, and lastly the maternal great-grandfather.' He gives reasons founded on the number of oblations deemed beneficial to the deceased owner

Jagannatha Tarkapanchanana intimates the opinion, that the son of a son's daughter, or of a grandson's daughter, or of a niece or of a nephew's daughter, are entitled to the succession before the maternal grandfather. (*Digest of Hindu Law* Vol IV. p 230)

I find nothing else upon the subject in other writers of the *Bengal* school, and, amidst this disagreement of authors, I should be inclined to give the preference to the authority of Srikrishna's *Krama-sangraha*, because the order of succession on the mother's side, as there stated, follows the analogy of the rule of inheritance on the father's side C

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* That part of the text which is enclosed between crotchets is wanting in some copies of the *Krama-sangraha*.

CHAPTER XII.

On a second partition of property after the reunion of coparceners

1 When partition is again made after reunion of parceners, the shares must be equal. So Manu &c

1 Next the partition of the property of reunited coparceners is explained On that subject Manu and Vishnu say, "If brethren, once divided and living again together as "parceners, make a second partition the shares must in "that case be equal there is not in this instance any right "of primogeniture "*

2 That is the superior allotment in right primogeniture is forbidden.

A passage of Vrihaspati confirms this construction.

2. The shares must be equal] This supposes reunion of brothers belonging to the same tribe But, in the case of association of brothers appertaining, the one to the sacerdotal, and the other to the military tribe, the rule of distribution must be understood to conform with the original allotment of shares for the text is intended only to forbid an elder brother's superior portion as before allotted to him Accordingly [since unequal partition, regulated by difference of tribes, is not denied,]† Vrihaspati, saying "Among brethren, who, being once separated, again live together through " mutual affection, there is no right of primogeniture when " partition is again made," prohibits only the assignment of a superior share to the eldest, but does not ordain equality of allotments.

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1 *Property of reunited coparceners*] According to the doctrine of those who contend for a general property of coparceners in the aggregate estate, reunited property is wealth in which an aggregate property is raised by the annulment of previously vested several rights through a stipulation or agreement with a father, brethren &c. concluded subsequently to partition with one accord, to this effect the wealth, which is thine, is mine, and that, which is mine, is thine' But, according to the author's doctrine, it is wealth in which undistinguished several rights are raised by the annulment of the previous several rights through a stipulation as above-mentioned. Srikrishna.

* Menu, 9. 210 Vishnu, 18 41.
† Srikrishna and Achyuta.

3. Definition of "re-united coparcener," in a passage of Vrihaspati.

3. Reunited coparceners are described by Vrihaspati: "He, who, being once separated, dwells again, through affection, with his father, brother or paternal uncle, is termed "reunited."

4. It is restricted to certain relations: father and son; brothers, uncle and nephew.

4. A special association among persons other than the relations here enumerated, is not to be acknowledged as a reunion of parceners: for the enumeration would be unmeaning

5. Other rules hold goods in this as in any partition among brothers.

5. Other particular rules, which have been set forth under the head of partition among brothers, must be observed in this case also

6. Conclusion.

6. Thus has the right of a reunited parcener been explained

ANNOTATIONS.

5. *Other particular rules*] Wealth, acquired without use of the joint stock, belongs to the acquirer exclusively, and is not shared by the rest: but, in the instance of the gains of science, such of the brethren as are equally or more learned participate, and, in the case of wealth acquired with the use of the joint stock, all partake These and other special rules, set forth under the head of partition among brethren, must be observed also in the case of partition after reunion Srikrishna.

CHAPTER VIII.

On the distribution of effects concealed.

1. The distribution of that, which was concealed at the time of partition and is afterwards discovered, shall be now taught On that subject Manu says, " When all the debts "and wealth have been justly distributed according to law, " any thing, which may be afterwards discovered, shall be " subject to an equal distribution "*

1. If effects have been concealed and be discovered, they are subject to distribution, as ordained by Manu.

2 The division of it should be precisely similar to that which had been previously made; and a less share is not to be given, nor no share, to the person who concealed the property, as a punishment of his concealment Such is the meaning of the sentence ' shall be subject to an equal distri- " bution " Now is the text intended to enjoin the allotment of equal shares of the property to all the parceners· for there is no reason for prohibiting the deduction in favour of the eldest, and so forth ; and it would follow, that brothers belonging, one to the sacerdotal, another to the military, and the rest to other tribes, would have equal shares.

2. The second distribution is made on the same principles with the first

3. Thus Yajnyavalcya says, " Effects, which have been withheld by one coheir from another, and which are dis- " covered after the separation, let them again divide in equal shares: this is a settled rule."†

3 A passage of Yajnyavalkya confirms this.

ANNOTATIONS.

2. *For there is no reason.*] Since the text is significant as obviating a supposition, that the withholder of the effects shall have a smaller share, or none, it is illogical to make it a restriction of the precept for allowing a deduction of a twentieth part and so forth to the eldest &c. Srikrishna.

Since the sentence, "shall be subject to an equal distribution," is pertinent as grounded on the reasons here stated ; it is wrong to make it a restriction of a different text. Achyuta.

If a younger brother be the person who withholds the effects, the eldest, though faultless, would have less than his regular share, and the youngest more. This objection is also to be understood. Ragh on *Dayabhaga*,

* Manu, 9, 218.

† Yajnyavalkya, 2. 127.

4. Katyayana directs what has been ill distributed, to be divided anew.

4. So Katyayana declares [by the close of the following text,*] that a division shall be again made of that which has been distributed in an undue manner "What has been concealed by one of the coheirs, and is afterwards discovered, let "the sons, if the father be deceased, divide equally with their brethren Effects, which are withheld by them from each other, and property which has been ill distributed being subsequently discovered, let them divide in equal shares. So Bhrigu has ordained,"

5. But a fair distribution is conclusive.

5. But the maxim, "Once is the partition of inheritance made,"‡ relates to the case of a fair distribution

6. And what has been already justly divided, is not distributed afresh.

6. "Being subsequently discovered"] The meaning is, that what has been already divided, is not to be again distributed

7. Katyayana provides, that violence shall not be used to compel restitution of effects withheld; nor shall the coheir make good what he has consumed.

7. So Katyayana says, "Effects, which have been taken by a kinsman, he shall not be compelled by violence to restore: and the consumption of unseparated kinsmen, they shall not be required to make good" By gentle means, and not by violence, a kinsman shall be made to restore the effects taken by him But what has been consumed by a coheir during coparcenery over and above his due proportion, he shall not be required to make good

8. An argument against the doctrine, that embezzlement of common property is theft.

8. In answer to those authors, who contend, that, in this case, as there is the property of another in the common effects, he, who embezzles, them is a thief and of course a sinner; the following argument is propounded since the received import of the term conveys, that a thief is he, who usurps a right in the property of another, without a title (by gift sale or other act of the owner,*] being clearly conscious, that the thing belongs to another; but, in the persent case, the person cannot distinguish this is mine and that is another's for the goods are undivided; therefore, a donation is complete then only, when the owner, conscious that the thing is his, relinquishes it with a view to its becoming the property of another person, and that other

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The *Mitakshara*. Sulapani, Kulluca bhatta and others maintain the doctrine which is here opposed. Ragh. Ibid.

* Srikrishna. † Manu, 9, 47. ‡ Srikrishna.

person is sensible of the property, apprehending 'this is become mine but this cannot occur in respect to common goods, and therefore common property is pronounced unfit to be given; so theft likewise is complete by the consciousness that this is not mine, but another's; therefore the crime of theft is not imputable to the act of embezzling what is common.

9 But the term embezzlement or withholding (*apahara*) signifies concealment and concealment is not exactly theft; for the word theft is in use for an unconcealed taking Thus Katyayana says, "The taking of another's goods, whether privately or openly, by night or by day, is termed theft" Accordingly [since the concealment of common property is not theft,*] it has been before declared, that the withholder of the goods shall not be compelled by violence to restore them (§7) But, if it were a theft [in him who withholds common property,†] then, under the text which directs, that "Having compelled the thief to restore the stolen goods, the king should smite him by various modes of condign punishment "‡ admitting even that he should be made to restore the goods by gentle means, still the smiting of him would be indispensable

9. Embezzlement is not theft.

10 This too [namely that such is the definition of theft,§] appears from the sages authorizing the allotment of a share even to the withholder of common property.

10. Accordingly the person embezzling has nevertheless his regular share.

11. Accordingly it is observed by Viswarupa. "The crime of theft is not here imputable; for the recital of the text obviates that supposition His meaning is, because. he sense of the verb to steal is not applicable to the case.

11. Viswarupa's opinion is consonant to this.

12. Hence also it is remarked by Jitendriya, in the chapter on expiation and penance, that if a man seize, gold appertaining to another by mistake for iron or other matter [of little value;] or something which is not gold, mistaking it for this substance; or a thing resembling some chattel of

12. And so is Jitendriyas.

ANNOTATIONS.

12. *Consequently there is not in this case a complete theft.*] Raghunandana contests this reasoning, without however materially differing as to the result. He says, 'It is the doctrine of Jitendriya, and of the authors of the *Dayabhaga* and *Prayaschitta Viveca*, that, if goods be taken knowing them to be another's, the crime of theft is committed, but

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* Srikrishna. † Srikrishna. ‡ Yajnyavalkya.
§ Achyuta and Srikrishna.

his own but belonging to another person, by mistake for his own, in all these cases there is not a complete seizure [or wilful taking of the gold:] for, in these several instances, there is not a knowledge of its belonging to another person, being such as the thing in fact is. In like manner, in the present instance also, [viz in that of common property,*] the same holds good for previous to partition, a discriminative property, referrible to particular persons relatively to patricular things, is not perceived. Consequently there is not in this case a complete theft.

13. Admitting it to be theft, the guilt is not incurred.

13. Or, admitting that it is a theft, the guilt of robbery is not incurred for the text allows a share even to the person who embezzles the property. Else, in the case of embezzling gold or other valuable effects, the offender, being degraded from his tribe, would have no allotment.

ANNOTATIONS.

that crime is not imputable to one who uses them by a mistake as to the substance. Their assertion that the appropriation of another's property by mistake for this own is not theft, appears unsatisfactory for it is at variance with the story of Nriga in the *Bhagavata*. "A cow, belonging to a certain eminent priest strayed into my herd of kine, and being confounded with them was given by me ignorant of the circumstance, to a man of the sacerdotal tribe. The owner, claimed her for his own, and the other replied, she is mine by gift, Nriga gave her to me. The priest, contending, addressed me, setting forth their claims you are the giver said the one, the lawless taker said the other. "Hearing this I was confounded. For that sin was I transformed into a lizard since which time I have seen myself, O prince, in this degraded form."†

But, if many rings belonging to divers persons be mixed together, it is no theft if one sell another's ring by mistake for his own, in consequence of their similarity for they were placed together under the conviction that, in the case of many articles which have no discriminative mark as cowries or the like, belonging to different persons, being intermixed, no offence is committed if they be reciprocally used by a sort of of barter, else a person would not do so, [he would not place them together,‡] under the apprehension of offence. "The following passage of the *Matsya purana* relates to this case The man, who, through ignorance make a sale of another man's chattels is faultless, but, wilfully doing so, he merits punishment as a robber" Therefore, the disposal of chattels belonging exclusively to another person, without such person's consent and with the reflexion, "this is mine and shall be disposed of according to my pleasure," is theft. Sometimes it is mental, being a resolution only In other instances it is corporeal, as an actual gift or sale but such [a theft§] cannot happen in the case of the goods of undivided brethren: for it cannot be distinctly ascertained "this is mine and that is another's." Accordingly [since there is no theft,||] Katyayana says, ' Effects which have been taken &c." (§7) Here taken [or more literally embezzled] is used metaphorically

* Srikrishua. † Sribhagavata. 10, 64. ‡ Kasirama.
§ Kasirama. || Kasirama.

14. If it be alleged, that, since there is no text expressly authorizing the allotment of a share to the thief who has embezzled gold to an amount sufficient to cause his degradation from his tribe, the rule for the allotment of share is presumed to be applicable to the case of theft of other effects: but why may not the law, which forbids the stealing of gold or the like, be the rather considered as relating only to goods appertaining to another, and not common? Still, however, there is no proof or authority on which to ground the selection [of one of these restrictions in preference to the other.] The answer to this alleged objection is as follows: in the legal definition, the taking of another's goods is theft,* another's signifies appertaining to a different person to the utter exclusion of any right of his own; for, of two sorts of property, common and several, the notion of several property is most readily presented. Therefore the proposition is similar to that which provides for the previous performance of a sacrifice, [preparatory to the sacrifice with the acid asclepias,†] where an oblation, such as is presented at the full of the moon, intends particularly the offering of a cake of ground rice, as used at the *Agnishoma* [one of the ceremonies performed at that period,] and not the oblation of liquid butter, as practised at the *Upansu yaga* for this is common to the *Agnishoma* and to sacrifices bearing other denominations.

14. An objection answered.

ANNOTATIONS.

'Thus also there is no offence in taking a treasure which is found. For it is a thing of which the owner is lost

'There is not similar [innocency‡] in the case of associated traders for no text indicates it On the contrary, it is directed by a passage of Yajnyawalkya (2 264.) that a fraudulent partner shall be dismissed without profit. Traders have not, as in the instance of inherited effects, a property vested in several persons relatively to the same chattel. But, by reason of intermixture, the property in the goods is uncertain.'

14. *An oblation such as is presented at the full of the moon, intends Particularly the offering of a cake of ground rice*] Two sorts of oblations are commonly used at different sacrifices One, which is the simplest, consists of clarified butter only the other, termed *purodasa*, is a cake of ground rice kneaded with hot water into the form of a tortoise and roasted on a specific number of potsherds before one of the consecrated fires; it is then smeared with clarified butter, and presented as a burnt offering in the second consecrated fire.

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* Achyuta. † Katyayana, Vide Supra, § 9. ‡ Achyuta.

15. Baloka's concurrence inferred.

15. Accordingly [since it is not theft,*] there is no censure any where expressed in Baloka on such a subject [viz in regard to the taking of common property†]

16. A remark confuted.

16 It is a remark of Bala, that, as in the instance of green and of black kidney beans‡ in relation to sacrifices, where it might be supposed, that black kidney beans would be a fit substitute when green kidney beans are not procurable, but the use of such beans is prohibited by an express passage of scripture which declares that black beans are unfit to be employed at sacrifices; so, notwithstanding the taking of that which is, and that which is not, his own, [being common,] is permitted, still the taking of what exclusively is not his own is forbidden: this is puerile; for the definition of theft, as above explained, is not applicable [to the case of embezzlement of common property.§] It cannot be affirmed, that black kidney beans are unemployed in sacrifices; although ground particles of green beans, intermixed with black beans, be employed; for, in such case, mixed black beans appear to be used at the sacrifice.

17. Conclusion.

17. Thus has partition of effects concealed by coparceners from each other, been discussed.

ANNOTATIONS.

15. *Accordingly since it is not theft.*] The author has, in this disquisition, relied on the doctrine of those who maintain a general property vested in the coparceners over the aggregate estate. But, according to his own doctrine of several rights to portions of the estate, it is difficult, even with all this laborious argument, to obiate the inference of theft. Srikrishna.

16. *It is a remark of* bala.) In the silence of the commentators, it appears uncertain whether this be the name of an author; and whether the person, noticed in the preceding paragraph under the name of Baloka, be intended: or whether the meaning be, 'it is the remark of a child *(bala)* it is puerile.

As in the instance of green and of black kidney beans.]The author here adverts to the reasoning contained in the *Mimansa*, 6, 3. Vide *Mitakshara*, C. I. Sect 9. §11.

* Srikrishna. † Achyuta and Srikrishna.

‡ *Mudga*, *Phaseolus Mungo*, green kidney beans. *Masha*, *Phaseolus max*. v *radiatus*, black kidney beans.

§ Srikrishna.

CHAPTER XIV.

On the ascertainment of a contested partition.

1. The determination of a doubt, regarding the fact of a partition having been made, is next explained. On that subject Narada says, "If a question arise among cohens in regard to the the fact of partition, it must be ascertained by the evidence of kinsmen, by the record of the distribution, or by the separate transaction of affairs."* **1. Mode of ascertaining the fact of partition, stated by Narada.**

2. The mention of kinsmen is intended to show, that, if such be forthcoming, other persons should not be made witnesses. Accordingly [since a recourse to other witnesses is forbidden when kinsmen are forthcoming,]† Yajnyawalka says, " When partition is denied, the fact of it may be ascertained by the evidence of kinsmen, relatives and witnesses, and by written proof; or by separate possession of house or field."‡ **2. Exposition of his text. A similar passage of Yajnyavalkya'**

3. In the first place kinsmen or persons allied by community of funeral oblations, are witnesses. On failure of them, relatives, as signified by the term *bandhu* In default of these, strangers may be witnesses For, if they were equally admissible, the specific mention of kinsmen and relatives would be unmeaning; since they are comprehended under the term "witnesses." **3. Order in which the various proofs are admissible**

4. Hence also Sankha says, "Should a doubt arise on the subject of a partition of the wealth of kindred, the family may give evidence, if the matter be not known to the relations sprung from the same race. Relations sprung from the same race are kinsmen. If the matter be not known to them, the family or relatives as the maternal **4. A passage of Sankha expounded.**

ANNOTATIONS.

1. *By the record of the distribution.*] Achyuta and Srikrishna notice a variation in the reading ot the text, *bhoga-lekhyena*, in place of *bhagalekhyena*. Their exposition of that reading is by occupancy or by writing.' In the various quotations of this passage in numerous compilations, no other hint of such a reading has been found except in Balam-bhatta's commentary on the *Mitkeshara*.

Jimuta-vahana makes subsequent mention (§5) of another unauthorized variation of the text.

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* Narada, 13, 35. † Srikrishna. ‡ Yajnyavalkya, 2. 150.

uncles and the rest] may give* evidence: but not a stranger [while a person of the family can bear testimony §] But, if these also be uninformed, any other person may be a witness.

5. The reading of Naradas text confirmed.

5. Accordingly, kinsmen are stated by Narada [§1] as the chief evidences: and a different reading, *jnyatribhih*, persons acquainted with the matter [instead of *jnyatibhih*, kinsmen] is unfounded.

6. Written evidence in this case come after and evidence.

6. Next the proof is by written evidence: but written proof is [in general] superior to oral testimony· being so declared [by an express passage of law: "Testimony is better than presumption; and a writing is better than oral evidence."‡]

7. Next presumptive proof is admitted; as directed by Narada.

7. In the next place, the proof is by the circumstanee of separate transaction of affairs [§1] as it is stated by Narada, "Gift and acceptance of gift, cattle, grain, house, land and attendants, must be considered as distinct among separated brethren, as also diet, religious duties, income and expenditure. Separated, not unseparated, brethren may reciprocally bear testimony, become sureties, bestow gifts and accept presents. Those, by whom such matters are publicly transacted with their coheirs, may be known to be separate even without written evidence."§

8. And by Vrihaspati.

8. So Vrihaspati: "A violent crime, immoveable property, a deposit, and a previous partition among coheirs, may be ascertained by presumptive proof, if there be neither writing nor witnesses. The exertion of force, a blow, or the plunder, may be evidence of violent crime; possession of the land may be proof of property; and separate wealth

ANNOTATIONS.

7. *With their coheirs*] This is according to the reading of the text, as it is expounded in the *Smriti-chandrica*. But copies of Jimutavahana, exhibit *swa-ricthatah* 'with their own wealth,' instead of *swa-rictheshu* 'with their coheirs,' or *atha-ricthinam*, the correspondent reading which occurs in the *Ratnacara*. As neither Jimuta-vahana, nor his commentators, explain the passage, it has been thought expedient to follow the reading which preserves the best sense.

Exertion of force, a blow &c.] The commentary of Srikrishna comfirms and explains the reading, as exhibited in Jimutavahana's quotation But in the *Smriti-chandrica* the text is read and interpreted *cula nubandha* a family feud instead of *balanubandha* an exertion of force,' and *vyaghat* is expounded 'rivalship' instead of mark of a blow.'

* *Viramitrodaya*. † Srikrishna. ‡ Achyuta and Srikrishna.
§ Narada, 13. 38. 40.

is an argument of partition. They, who have their income, expenditure and wealth distinct, and have mutual transactions of money-lending and traffic, are undoubtedly separate."

9. One brother gives and another accepts, or they have separate house and land, or their income and expenditure [of wealth*] and abode are separate, or, when a loan or other affair is transacted by one, another is made witness to it, or becomes surety; or they have mutual transactions of money lending or the like; or one, having bought certain goods from another person, sells it for traffic to his brother; in these and similar instances, since any such act can only take place among divided brethren, a presumption is deduced from it by the intelligent. **9. Interpretation of the text.**

10. It is not to be concluded from the use of the plural number in the phrase by whom such matters are transacted [§7], that the concurrence of all those circumstances is required. For these texts are founded on reason; and the reason is equally applicable in every several instance. **10. Any one of the stated proofs is sufficient.**

11. By saying "if there be neither writing nor witnesses [§8] it is intimated, that presumptive proof is to be admitted only in default of written and oral evidence. **11. Presumptive proof is admitted for want of direct evidence.**

ANNOTATIONS.

11. *By saying "if there be neither writing nor witnesses"*] This remark confirms the reading of the passage, as exhibited in the text. But, in the *Smriti-chandrica*, it is read "if there be no witnesses;" *na syur yatra cha sacshinah* in place of *na syatam patra-sacshinau.*

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* Srikrishna.

CHAPTER XV.

Peroration.

1. Gratification cannot be afforded in this work, to those whose comprehension of the principles of the law of inheritance is impeded by submission to the authority of teachers: but the author's labour has been devoted to reconcile the doctrines of sages whose intellect was governed by evidence [of holy writ.]

2. This treatise, composed by Jimutavahana, should be considered as adapted to clear the doubts which arise from the various interpretations of preceding authors.

3. Thus, in the *Dharmaratna* or gem of the law, composed by the great doctor the fortunate Jimutavahana, the *Dayabhaga*, or law of inheritance, is finished.

ANNOTATIONS.

The authority of teachers] As Srikara-misra and the rest. Srikrishna

Sages whose intellect &c] Achyuta and Srikrishna notice another reading of this passage, *manisha-sambade* instead of *muninam sambade* According to that reading, the sense is "devoted to reconcile the doctrines of those who attend to proof and demonstration."

* "Of the Kala of Paribhadra" has been omitted by Colebrook.

† "Of the Gain Pari has been omitted by Colebrooke'

FINIS.

दायभागः।

मन्वादिवाक्यान्यविमृश्य येषां यस्मिन् विवादो बहुधा बुधानां। तेषां प्रबोधाय स दायभागो निरूपणीयः सुधियः शृणुध्वं। अथ दायभागो निरूप्यते। तत्र नारदः। विभागोऽर्थस्य पित्र्यस्य पुत्त्रैर्यत्र प्रकल्प्यते। दायभाग इति प्रोक्तं तद्विवादपदं बुधैः। पितृत आगतं पित्र्यं तच्च पितृमरणोपजातस्वत्वमुच्यते। पित्र्यस्येति-पुत्त्रैरिति च द्वयमपि सम्बन्धिमात्रोपलक्षणं सम्बन्धिमात्रेण सम्बन्धिमात्रधन-विभागेऽपि दायभाग पदप्रयोगात् अतएव दायभाग विवादपदमुपक्रम्य नारदोऽपि मात्रादिधनविभागमप्युपदर्शितवान्। तथा मनुरपि पित्रादिपदमदत्त्वैव एष स्त्रीपुंसयोरुक्तो धर्म्मो वो रतिसंहितः। आपद्यपत्यप्राप्तिश्च दायभागं निबोधतेत्युपक्रम्य यावत्सम्बन्धिधनविभागमुक्तवान्। दीयत इति व्युत्पत्त्या दायशब्दो ददातिप्रयोगश्च गौणः। मृतप्रव्रजितादिस्वत्वनिवृत्तिपूर्व्वकपरस्वत्वोत्पत्तिफलसाम्यात् न तु मृतादीनां तत्र त्यागोऽस्ति। ततश्च पूर्व्वस्वामिसम्बन्धाधीनं तत्स्वाम्योपरमे यत्र द्रव्ये स्वत्वं तत्र निरूढो दायशब्दः। ननु किं दायस्य विभागो विभक्तावयवत्वं यद्वा दायेन सह विभागोऽसंयुक्तत्वं न तावत्पूर्व्वः दायविनाशापत्तेः नापि द्वितीयः संयुक्तेऽपि न ममेदं विभक्तं स्वं भ्रातुरिदमिति प्रयोगात्। नच सम्बन्धाविशेषात् सर्व्वेषां सर्व्वधनोत्पन्नस्य स्वत्वस्य द्रव्यविशेष व्यवस्थापनं विभाग इति वाच्यं सम्बन्धान्तरसद्भावप्रतिपक्षस्य सम्बन्धस्यावयवेष्वेव विभाग व्यङ्ग्यस्वत्वापादकत्वात् कृत्स्नपितृधनगतस्वत्वोत्पादविनाशकल्पनागौरवात् यथेष्टविनियोगफलाभावेनानुप-योगाच्च। उच्यते एकदेशोपात्तस्यैव भूहिरण्यादावुत्पन्नस्य स्वत्वस्य विनि-गमनाप्रमाणाभावेन वैशेषिकव्यवहारानर्हतया अव्यवस्थितस्य गुटिकापातादिना व्यञ्जनं विभागः। विशेषेण भजनं स्वत्वज्ञापनं वा विभागः। यत्रापि चैकं दासीगवादिकं बहुसाधारणं तत्रापि तत्तत्कालविशेषवहनदोहनफलेन स्वत्वं व्यज्यते। तदाह बृहस्पतिः। एका स्त्री कारयेत् कर्म्म यथांशेन गृहे गृहे।

उद्धृत्यं कूपवाप्यम्भस्त्वनुसारेण गच्छते वुद्या विभजनीयं तदन्यथानर्थकं भवेत्। इदं श्लोकार्द्धद्वयं नानास्थानस्थं न तु क्रमिकं। ननु पितर्य्यूर्द्धं गते पुत्रा विभजेयुर्द्धनं पितुरिति नारदवचनात् पितुर्द्धनं विभजेयुरित्यन्वयात् विभागात्पूर्व्वं न तत्र पुत्राणां स्वत्वं नच विभागस्य स्वत्वकारणता असम्बन्धिधनेप्यतिप्रसङ्गात्। उच्यते पित्रादिनिधनानन्तरमेवास्मदीयं धनमिति प्रयोगात् एकपुत्रे च विभागं विनैव स्वत्वस्वीकाराच्च सम्बन्धिनिधनमेव स्वत्वकारणमतोनातिप्रसङ्गः। नन्वर्ज्जयितृव्यापारोऽर्ज्जनं अर्ज्जनाधीनस्वामिभावश्चार्ज्जयिता तेन पुत्रव्यापारो जन्मैवार्ज्जनं युक्तं अतो जीवत्येव पितरि पुत्राणां तत्र स्वत्वं नतु तन्निधनात् अतएवोक्तं क्वचिज्जन्मैव यथा पित्र्ये धने। नैतत् मन्वादिविरोधात् यथा मनुः ऊर्द्ध पितुश्च मातुश्च समेत्य भ्रातरः समं भजेरन् पैतृकं रिक्थमनीशास्ते हि जीवतोः। जीवतोरपि पित्रोः पुत्राणां कुतो न विभागइत्याशङ्कयामिदमुत्तरं तदानीमस्वामित्वादिति नच भार्य्या पुत्रश्चत्यादिवदस्वातन्त्र्याभिप्रायमिति वाच्यं तदानीं स्वत्वे प्रमाणाभावात् भार्य्यादिषु तु यत्ते समधिगच्छन्ति अर्ज्जयन्तीति स्वत्वे सिद्धे युक्तमस्वातन्त्र्यवर्णनं। किञ्च स्वोपात्तेपि तेषामस्वामित्वे स्वधनसाध्यवैदिककर्म्मोच्छेदात्स्मृतिविरोधः स्यात्। देवलश्च पितृधनेऽस्वाम्यमेव स्पष्टयति यथा पितर्य्युपरते पुत्रा विभजेयुर्द्धनं पितुः। अस्वाम्यं हि भवेदेषां निर्द्दोषे पितरि स्थिते। किञ्च जीवत्यपि पितरि पितृधने पुत्राणां स्वामित्वे पितुरनिच्छयापि विभागः स्यात् जन्मनैव स्वत्वमित्यत्र प्रमाणाभावाच्च अर्ज्जनरूपतया जन्मनः श्रुतावनधिगमात्। क्वचिज्जन्मैवेति च जन्मनिबन्धनत्वात् पितापुत्रसम्बन्धस्य पितृमरणस्य च स्वत्वकारणत्वात् परम्परया वर्णनं। अन्यव्यापारेणान्यस्य स्वत्वमविरुद्धं शास्त्रमूलत्वादस्य। दृष्टञ्च लोकेपि दाने हि पीतमोद्देश्यविशिष्टत्यागादेव दातृव्यापारात् सम्प्रदानस्य द्रव्ये स्वामित्वं। नच स्वीकारणात् स्वत्वं स्वीकर्त्तुरेव दातृत्वापत्तेः परस्वत्वापत्तिफलेन हि दानरूपता तच्च फलं सम्प्रदानाधीनं यथा देवतोद्देशेन द्रव्यत्यागं कुर्व्वन्नपि यजमानो न होता किन्तु तस्यैव त्यागस्य होमाभिधाननिमित्तं प्रक्षेपं कुर्व्वन् ऋत्विगेव होतेत्युच्यते तद्वदत्रापि स्यात्। किञ्च मनसा पात्रमुद्दिश्येत्यादिशास्त्रे स्वीकारात् प्रागेव दानपदं दृष्टं। ननु यद्यपि स्वीकारः अभूततद्भावे च्विप्रयोगात् अस्वं स्वं कुर्व्वन् व्यापारः स्वीकारो भवति कथं तत्प्रागेव स्वत्वं। उच्यते उत्पन्नमपि स्वत्वं सम्प्रदानव्यापारेण ममेदमितिज्ञानेन यथेष्टव्यवहारार्हं क्रियतइति स्वीकारशब्दार्थः। याजनाध्यापनसाद्गुण्याच्च प्रतिग्रहस्य स्वत्वमजनयतोपि अर्ज्जनरूपता

न विरुद्धा याजनादौ दक्षिणादानादेव स्वत्वात्। पितृनिधनकालीनं वा जीवनमेव पुत्रस्यार्ज्जनं भविष्यति। किञ्च भ्रात्रादिधने तन्मरणात् तन्मरणकालीनजीवनाद्वा भ्रात्रन्तरादेः स्वत्वमकामेनापि वाच्यं। अत ऊर्द्ध्वं पितुश्चेत्यादि तत्कालीन स्वत्वज्ञापनार्थं तदानीमेव चेच्छाप्राप्तं विभागमनुवदति प्राप्तत्वात् विधानानुपपत्तेः। नच नियमः सम्भवति एवं सहवसेयुर्व्वा पृथग्वा धर्म्मकाम्ययेति मनुविरोधात् दृष्टार्थत्वाच्च विभागस्य न तन्नियमः कालनियमो वा सम्भवति किञ्च पितर्य्युपरतइत्यनन्तरकालएव विभागः स्यात् न तु परस्तादपि जातेष्टिवत् जातप्राणवियोगापत्तिसमानस्यात्र विरोधस्याभावात् पितुरुपरमानन्तरस्य च यावज्जीवपर्य्यन्तस्य सेच्छातएव प्राप्तत्वात्। अतो जीवति पितरि सत्यपि पुत्राणां स्वाम्ये विभागनिषेधार्थं मनुवचनं वाच्यं तथाप्यर्थ्यस्वार्थपरत्वापत्तेः अतो जीवतोः पित्रोर्द्धने पुत्राणां स्वाम्यं नास्ति किन्तूपरतयोरिति ज्ञापनार्थं मन्वादिवचनं एकः शब्दोऽपरस्वार्थः। न चोपरममात्रमेव विवक्षितं किन्तु पतितप्रव्रजितत्वाद्युपलक्षयति स्वत्वविनाशहेतुतासाम्यात्। तदाह नारदः। मातुर्निवृत्ते रजसि दत्तासु भगिनीषु च। विनष्टे वाप्यवरणे पितर्य्युपरतस्पृहे। विनष्टे पतिते अवरणे गृहस्थाश्रमरहिते। यदा निवृत्ते वापि मरणादितिपाठः तदा मरणान्निवृत्ते जीवति निस्पृहइति। पाठान्तरमनाकरं। अत्रापुप्रपरतस्पृहत्वादिना पुत्राणां स्वत्वं पितृधने भवतीति ज्ञापनादयमेकः कालो विभागस्येच्छाप्राप्तोऽनूद्यते प्राप्तानुसारित्वाच्चानुवादस्य स्वामित्वाच्च प्राप्तेः। एकस्यापि स्वधने स्वाम्यादेकेच्छयापिविभागप्राप्तेः समेत्येति सहितत्वं पक्षप्राप्तमनूद्यते। अन्यथा साहित्यवत् बहुत्वस्याप्यवगते द्वयोर्व्विभागो न स्यादेव द्वयोर्व्विभागप्रतिपादकशास्त्राभावात्। ननु उपरते पितरि ज्येष्ठएव धनाधिकारी नेतरे। यथा मनुः। ज्येष्ठएव तु गृह्णीयात् पित्र्यंधनमशेषतः। शेषास्तमुपजीवेयुर्यथैव पितरं यथा। ज्येष्ठोऽत्र पुन्नामनरकत्राणकर्त्ताऽभिप्रेतो न तु जीवदपेक्षः। यथा मनुः। ज्येष्ठेन जातमात्रेण पुत्री भवति मानवः। पितृणामनृणश्चैव स तस्मात्सर्व्वमर्हति। यस्मिन्नृणं सन्नयति येन चानन्त्यमश्नुते। स एव धर्म्मजः पुत्रः कामजानितरान् विदुः। नैतत् सर्व्वेच्छाधीनज्येष्ठाधिकारस्मृतेः। यथा नारदः। बिभृयाद्वेच्छतः सर्व्वान् ज्येष्ठो भ्राता यथा पिता। भ्राता शक्तः कनिष्ठोवा शक्त्यपेक्षा कुले स्थितिः। सर्व्वेच्छया कनिष्ठोपि शक्तः सन् बिभृयादिति ज्येष्ठता चातन्त्र्यं यथा मनुः। एवं सह वसेयुर्व्वा पृथग्वा धर्म्मकाम्यया। पृथग्विवर्द्धते धर्म्मस्तस्माद्धर्म्या पृथक्क्रिया। तत्र पृथग्धर्म-

तिपदाभ्यां कामयेतेति चेच्छाया विकल्पकत्वं दर्शयति। तदेवं पितृस्वत्वापगम एकः कालो ऽपरस्त्वनपगत एव पितुःस्वाम्ये पितुरिच्छयेति कालद्वयं। न पुनः पितर्य्युपरतइत्येकः कालः पितर्य्युपरतस्पृहे मातुश्च निवृत्ते रजसीत्यपरः अनिवृत्तेपि मातृरजसि पितरि सस्पृहे तदिच्छयेति कालत्रयमादरणीयं। मातृ-रजोनिवृत्तेः पितुरुपरतस्पृहत्वविशेषणत्वे त्रिंशद्वर्षो वहेत् कन्यां हृद्यां द्वादशवार्षिकीं। त्र्यष्टवर्षोऽष्टवर्षां वा धर्म्मे सीदति सत्वरइति मनुना विवाहकालविधानात् वनं पञ्चाशतो व्रजेदित्याश्रमान्तरगमनकालविधानात्। तदा च रजोनिवृत्ते र्मातुरसम्भवे पितरि चोपरतस्पृहे वानप्रस्थे तत्पुत्राणामिच्छतामप्यविभागप्रसङ्गात् निर्विशेषणमुपरतस्पृहत्वमेव पितृधनविभागकालइति चेन्न अनुपरतस्पृहे पितरि पतितेऽप्यविभागप्रसङ्गात्। अथमप्यपरः काल इत्यभिधाने कालचतुष्टयापत्तिः पितुरुपरमः पतितत्वं निस्पृहत्वं इच्छा चेति। यत्र काम्याश्रमे पितरि पुत्राणां विभागेस्वातन्त्र्यमुक्तं तद्वचनानभिज्ञत्वेन तथाच हारीतः। जीवति पितरि पुत्राणामर्थादानविसर्गाक्षेपेषु न स्वातन्त्र्यं कामं दीने प्रोषिते आर्त्ते गते वा ज्येष्ठोऽर्थांश्चिन्तयेत्। सुव्यक्तमाहतुः शङ्खलिखितौ। पितर्य्यशक्ते व्यवहारान् ज्येष्ठः प्रतिकुर्य्यात् अनन्तरोवा कार्य्यज्ञस्तदनुमतो नत्वकामे पितरि रिक्थ विभागो वृद्धे विपरीतचेतसि दीर्घरोगिणि वा ज्येष्ठएव पितृवदर्थान् पालयेदितरेषां तन्मूलं हि कुटुम्बमस्वतन्त्राः पितृमन्तो मातुरप्येवमवस्थितायाः। एतद्वचनद्वयं काम्याश्रमे दीर्घरोगिणि च पितरि विभागं निषिध्य ज्येष्ठएव गृहं चिन्तयेत् तदनुजीवा कार्य्यज्ञ इत्याह। अतो नत्वकामे पितरीत्येतदेव काम्याश्रमे पितरि रिक्थविभागइति-भ्रान्तलिखितं। तस्मात् पतितत्वनिस्पृहत्वोपरमैः स्वत्वापगमइत्येकः कालो ऽपरश्च सति स्वत्वे तदिच्छातइति कालद्वयमेवयुक्तं। मातुर्निवृत्ते रजसीति तु पितामहादिधनाभिप्रायं निवृत्ते रजसि पुत्रान्तरसम्भावनाभावात् तदानीमपि पितुरिच्छयैव पुत्राणां विभागः अनिवृत्ते रजसि क्रमागतधनविभागे पश्चाज्जातानां वृत्तिलोपापत्तेः नचासौ युक्तः। ये जाता येप्यजातावा येच गर्भे व्यवस्थिताः। वृत्तिं तेऽपि हि काङ्क्षन्ति वृत्तिलोपोविगर्हितइतिमनुवचनात्। यतएव पितृधने कालद्वयं अतएव मनुगौतमादिभिर्मृतपदं परित्यज्य ऊर्द्ध्वमित्युक्तं ऊर्द्ध्वं पितुरिति। पितुस्तदा स्वत्वापगमात् तदर्थमेवोर्द्ध्वमित्युक्तं अतोयमेकोविभाग कालः। ऊर्द्ध्वं विभागाज्जातस्त्वित्यनेन च सस्पृहे पितरि तदिच्छया विभागकालो ऽपरोदर्शितः। दत्तासु भगिनीषु चेति न कालार्थं किन्तु तासामवश्यं-दानार्थं। यथा यच्छिष्टं पितृदायेभ्यो दत्वर्णं पैतृकं ततः। भ्रातृभिस्तद्विभक्तव्य

ऋणी न स्याद्यथा पिता। इदं नारदवचनं पितर्य्यशोधनावश्यम्भावार्थं न विभागकालार्थं। अस्माच्च नारदवचनादयमर्थः सिध्यति यद्विभागकर्त्तृभिरुत्तमर्णानुमत्येव पित्रादि ऋणं विभजनीयं परिशोध्यं वा शोधनावशिष्टधनविभागप्रतिपादनस्यैतत्प्रयोजनत्वात् अतएव मातृधनस्यापि ऋणावशिष्टस्य विभागमाह याज्ञवल्क्यः। मातुर्दुहितरः शेषमृणात् ताभ्यऋतेऽन्वयः। एतच्च विस्तरेण ऋणादाने वक्ष्यते। यद्वा दत्तासु भगिनीषु मातृधनं पुत्त्रैरेव विभजनीयं अदत्तासुताभिः सह साधारणं एतच्चावसरे वाच्यं। एवन्तावत् पितृधनविभागस्य कालद्वयमप्युक्तं। सम्प्रति पितामहधनविभागकालोऽभिधीयते। तत्र बृहस्पतिः। पित्रोरभावे भ्रातृणां विभागः सम्प्रदर्शितः। मातुर्निवृत्ते रजसि जीवतोरपि शस्यते। नास्य वचनस्य पितृधनगोचरत्वं ऊर्द्ध विभागाज्जातस्त्वित्यस्य विरुद्धविषयत्वापत्तेः निवृत्ते रजसि पुत्त्रोत्पत्तेरभावात् मातृधनविषयत्वञ्चास्य नाशङ्कनीयं एवं मातुरेव निर्द्देशत्वापत्तेः अतोनिवृत्तेरजसीति पितामहादिधनविषयं। नचेच्छामनपेक्ष्य रजोनिवृत्तेर्विभागनिमित्तत्वं सम्भवति अनिच्छया विभागाभावात् सत्यामिच्छायां कस्येच्छयेत्यपेक्षायां ऊर्द्ध पितुः पुत्त्रारिक्थं विभजेयुः निवृत्ते रजसि मातुर्जीवति चेच्छतीति गौतमवचनात् पितुरेवेच्छातद्वति निर्णीयते। अतः पित्रोरभावइत्येकः कालः। पित्रोरिति द्विवचननिर्द्देशात् सोदरभ्रातृणां पितृधनविभागेपि मातुरभावएव कार्य्यः नतु मातृधनविभागार्थं मातुरभावस्योपादानं जीवतोरपीत्यस्य मातृधनगोचरत्वानुपपत्तेः अन्यधनगोचरत्वमवश्यं वाच्यं तेन यत्रैव विभागे पित्रोरभावो निमित्तं तत्रैव जीवतोरपीत्यपि शब्देन जीवनस्यापि शस्तत्वकीर्त्तनात् न मातुरभावो मातृधने व्याख्येयः। एतच्च विस्तरेण वाच्यं। तस्मात् पितामहादिधनस्यापि पित्रोरभावइत्येको विभागकालः तथा मातुर्निवृत्ते रजसि पितुरिच्छातइत्यपरः नतु पितुरिच्छामन्तरेण तस्य विभागः अनीशास्ते हि जीवतोः तथा अस्वाम्यं हि भवेदेषां निर्द्दोषे पितरि स्थिते तथा जीवति चेच्छतीति तथा पितुरनुमत्या दायविभागः तथा जीवति पितरि रिक्थविभागोऽनुमतेः तदेवमादिमनुनारदगौतमबौधायनशङ्खलिखितादिभिरविशेषेण जीवति पितरि पुत्त्राणां यावद्धनगोचरास्वामित्वस्य पितुरिच्छाधीनविभागस्य च प्रतिपादनात् पैतामहधनविभागकालस्य च पृथगेभिरनभिधानात् पैतामहधनगोचरत्वमप्यनीशत्वपितृनुमतिवचनानां। यत्तु याज्ञवल्क्यवचनं। भूर्य्यापितामहोपात्ता निबन्धो द्रव्यमेव वा। तत्र स्यात् सदृशं स्वाम्यं पितुः पुत्त्रस्य चोभयोः तस्य निरवद्यविद्योद्योतेन यातितत्त्वतीयमर्थः यत्र द्वयोर्भ्रात्रोर्जीवत्पितृकयोरप्राप्तभागयोरेकः पुत्त्रमुत्पाद्य विनष्टोऽन्योजीवति अनन्तरं

पिता मृत: तत्र पुत्रएव तद्धनं प्राप्नोत्वतिसन्निकर्षात् तदर्थं सदृशं स्वाम्यमिति वचनं। यथा पैतामहधने पितु: स्वाम्यं तथैव तस्मिन्मृते तत्पुत्राणामपि न तत्र सन्निकर्षविप्रकर्षाभ्यां कोपि विशेष: पार्व्वणविधिना पिण्डदानेन द्वयोरपि तदुपकारकत्व विशेषादित्यभिप्राय:। अतएव मृतपितृपितामहक: प्रपौत्रोपि पुत्त्रपौत्राभ्यां सह तुल्याधिकारी भवति पिण्डदत्वाविशेषात् जीवति तु पितरि पुत्राणां पितामहधनस्वामित्वे सपुत्रापुत्रभ्रातृद्वयविभागे तत्पुत्राणामपि भाग: स्यात् स्वामित्वाविशेषात्। तथा चाप्रक्रान्तत्वनातदर्थत्वं वचनस्य अनेकपितृकाणामेव प्रक्रमात्। निबन्ध: कार्त्तिक्यां कार्त्तिक्यामिदं दास्यामीति यन्निबद्धं द्रव्यं भूसादृचर्य्यात् द्विपदमभिहितं। अयमत्रा धारेश्वरपुरस्कृतो वचनार्थ:। इच्छयाविभागदानप्रवृत्तस्य पितु: पैतामहधने सदृशं स्वाम्यं पुत्रै: सह न तत्र स्वोपार्ज्जितधनइव न्यूनाधिकविभागमिच्छात: कर्त्तुमर्हतीति। यथा विष्णु:। पिता चेत् पुत्रान् विभजेत्तस्य स्वेच्छा स्वयमुपात्तेऽर्थे पैतामहे तु पितापुत्रयोस्तुल्यं स्वामित्वमिदं सुव्यक्तं यदि पिता पुत्रान् विभजति तदा स्वोपात्तेऽर्थे न्यूनाधिकविभागं स्वेच्छया पुत्रेभ्यो दद्यात् पैतामहे तु नैतत् यस्मात् तत्र तुल्यं स्वामित्वं न पुन: पितु: स्वच्छन्दवृत्तिता। अत: पितापुत्रयो: पैतामहधने समविभागार्थं सदृशं स्वाम्यमितिवचनं पुत्राणां वा विभागस्वातन्त्र्यार्थमिति मतद्वयमपि हेयं एवमेवापरमपि वचनं व्याख्येयं। अत: पैतामहादिधने पितृभागद्वयं पितुरिच्छातएव विभागो न पुत्रेच्छयेति सिद्धं। यत्तु मनुविष्णू। पैतृकन्तु पिता द्रव्यमनवाप्तं यदा प्रुयात्। न तत्पुत्रैर्भजेत्सार्द्धमकाम: स्वयमर्ज्जितं। स्वार्ज्जितत्वेन हेतुना नाकामो विभजेदिति वदन्तौ स्वयमनर्जिते पैतामहधने पितुरनिच्छयापि पुत्राणां विभागं दर्शयतस्तत्रापि विभागदानप्रवृत्त: पिता पितामहधनं स्वार्जितं नाकामो विभजेत् अन्यत् पुनरकामोपि विभजेदित्यस्वेच्छातएवेत्यर्थ:। न पुन: पुत्रेच्छया विभागं ज्ञापयत: मणिमुक्तादौ तु पुन: पैतामहे पित्रनर्ज्जितेपि स्वार्ज्जितइव पितुरेव स्वाम्यं न्यूनाधिकविभादानार्हत्वं। तथा याज्ञवल्क्य:। मणिमुक्ताप्रवालानां सर्व्वस्यैव पिता प्रभु:। स्थावरस्य तु सर्व्वस्य न पिता न पितामह:। पितामहस्मुतेसङ्गमविषयकं वचनं। मणिमुक्ताद्युपादाय पुन: सर्व्वस्येत्युपादानात् सर्व्वेषां भूम्यादिव्यतिरिक्तानां दानादिषु पितु: प्रभुत्वं न स्थावरनिबन्धद्रव्याणां। तत्रापि सर्व्वस्येत्युपादानात् सर्व्वस्य कुटुम्बवर्त्तनहेतो र्दानादिनिषेध: कुटुम्बस्यावश्यं भरणीयत्वात्। यथामनु:। भरणं पोष्यवर्गस्य प्रशस्तं स्वर्गसाधनं। नरकं पीडने चास्य तस्माद्यत्नेन तं भरेत्। अल्पस्य तु कुटुम्बवर्त्तनाविरोधिनो न दानादिनिषेध:

सर्व्वस्येत्यानर्थक्यापत्तेः । स्थावरग्रहणात् निबन्धद्विपदयो र्हंसापुपन्यायात् दानादि-निषेधसिद्धिः । यदि पुनः सर्व्वस्थावरादिविक्रयमन्तरेण कुटुम्बवर्त्तनमेव न भवति तदा सर्व्वस्यापि विक्रयणादिकमर्थात् सिद्ध्यति । सर्व्वतएवात्मानं गोपायीतेति वचनात् । नच स्थावरस्य समस्तस्य गोत्रसाधारणस्य च । नैकः कुर्य्यात् क्रयं दानं परस्परमतं विना । विभक्ता अविभक्ता वा सपिण्डाः स्थावरे समाः । एकोह्यनीशः सर्व्वत्र दानाधमनविक्रये । एतद्व्यासवचनद्वयेन एकस्यविक्रयाद्यनधि-कारइतिवाच्यं यथेष्टविनियोगार्हत्वलक्षणस्यस्वत्वस्य द्रव्यान्तर इवात्राप्यविशेषात् व्यासवचनन्तु स्वामित्वेन दुर्वृत्तपुरुषगोचरविक्रयदानादिना कुटुम्बविरोधात् अधर्म्म-भागिता ज्ञापनार्थं निषेधरूपं नतु विक्रयाद्यनिष्पत्त्यर्थं । एवञ्च स्थावरं द्विपदञ्चैव यद्यपि स्वयमर्ज्जितं । असम्भूय सुतान् सर्व्वान् न दानं नचविक्रय, इत्येवमादिकं तदप्येवमेव वर्णनीयं । तथाहि कर्त्तव्यपदमवश्यमत्राध्याहार्य्यं तेन दानविक्रय-कर्त्तव्यतानिषेधात् तत्करणात् विध्यतिक्रमोभवति नतु दानाद्यनिष्पत्तिः वचन-शतेनापि वस्तुनो ऽन्यथाकरणाशक्तेः । अतएव नारदः । यद्येकजाता बहवः पृथग्धर्म्माः पृथक्क्रियाः । पृथक्कर्म्मगुणोपेता न चेत्कार्य्येषु सम्मताः । स्वभागान् यदि दद्युस्ते विक्रीणीयुरथापि वा । कुर्य्युर्यथेष्टं तत्सर्व्वमीशास्ते स्वधनस्य वै । प्रकृतमनुसरामः । तदेवमुक्तप्रबन्धेन पितामहादिधने पितापुत्त्रयोः समभागविधा-नानुपपत्तेः पुत्त्राणां विभागस्वातन्त्र्यप्रतिपत्तिपरत्वाभावाच्च जनकेच्छाधीनन्यूनाधिक-विभागनिराकरणार्थं मृतपितृकस्य भ्रातुः पुत्त्रस्य पितृव्येण सह तुल्याधिकारार्थं वा वचनं । एवञ्च पितामहधनस्यापि पितुरिच्छयैव विभागः कार्य्यः किन्तु मातुर्निवृत्ते रजसीति विशेषः स्वोपात्ते तु रजोनिवृत्तिमन्तरेणापि, पितुरूर्द्ध्वमिति तु उभयत्राप्यविशिष्टं । तेन पैतामहधनेपि कालद्वयं । तत्र यदा पितैवेच्छातः पुत्त्रान् विभजति तदा पैतामहधनान् भागद्वयं स्वयं गृह्णीयात् । जीवद्विभागे तु पिता गृह्णीतांशद्वयं स्वयमिति बृहस्पतिना द्वावंशौ प्रतिपद्येत विभजन्नात्मनः पितेति नारदेन चाविशेषेण प्रतिपादनात् । किञ्च इतोपि पितामहधनात् पितुर्भागद्वयं ज्येष्ठस्य विंश उद्धारः सर्व्वद्रव्याच्च यद्वरं । ततोर्द्धं मध्यमस्य स्यात्तुरीयन्तु यवीयसः । तथा एवं समुद्धृतोद्धारे समानंशान् प्रकल्पयेत् । उद्धारेऽनुद्धृते त्वेषामियं स्यादंशकल्पना । एकाधिकं हरेज्ज्येष्ठः पुत्त्रोध्यर्द्धं ततोनुजः । अंशमंशं यवीयांसइति धर्म्मोव्यवस्थितः । एतैर्म्मनुवचनैः सर्व्वद्रव्यवरसहितविंश-तदर्द्धतत्तुरीयोद्धारा दर्शिताः तथा एकांशाधिकार्द्धांशाधिकचतुर्थभागाधिकभागाः प्रतिपादिताः । गौतमेनापि विंशतिभागो ज्येष्ठस्य मिथुनमुभयतोदद्युक्तो रथो

गोवृषः। मिथुनमजानीदो उभयतोदत् अश्वादि तद्युक्तो रथः गोयुक्तो वृषः एतत्सर्व्वं ज्येष्ठस्य। तथा काणखोरकूटवण्डा मध्यमस्यानेकाश्चेत्। खोरो वृद्धः कूटो वामनाकृतिः वण्डो विकृतलाङ्गूलः एते मध्यमस्य यदि वहवो भवन्ति पशवः। तथा अविर्धान्यायसी गृहमनोयुक्तं चतुष्पदाञ्चैकैकं यवीयसः समभितरत् सर्व्वं। अविप्रभृतयः कनीयसः अवशिष्टं सर्व्वं समं विभजेरन्निति प्रदिपाद्य द्व्यंशीवा पूर्व्वजः स्यादेकैकमितरेषामिति सूत्रेणांशद्वयं ज्येष्ठस्योक्तं। नचोपार्ज्जकत्वेन ज्येष्ठस्यांश-द्वयमिति वाच्यं उद्धारेऽनुद्धृते भागद्वयस्य विधानात् अर्ज्जकत्वे चोद्धारस्यासम्भवात् मध्यमकनीयसोश्चोपार्ज्जकतया ज्येष्ठेनाप्यविशेषात् तयोरध्यर्द्धादिविधानानुपपत्तेः ज्येष्ठादिपदानर्थक्याच्च अतएव पुत्रिकौरसयोः पितृधनविभागे मनुरपि। पुत्रिकायां कृतायान्तु यदि पुत्त्रोनुजायते। समस्तत्र विभागः स्याज्ज्येष्ठता नास्ति हि स्त्रियाइति स्त्रीत्वेन ज्येष्ठताभावात् समभागतां प्रतिपादयन् पुरुषस्य भागद्वयं प्रतिपादयति। यदुक्तं होलाकाधिकरणे प्राच्यकर्त्तृकहोलाकानुष्ठानोपपत्तये होलाका-कर्त्तव्येतिश्रुतिः कल्पिता तावतैव तदुपपत्तेः नतु प्राच्यादिपदवती कल्पना गौरवात् तद्वदत्राप्यर्ज्जकोऽंशद्वयं गृह्णीयादितिश्रुतिः कल्पनीया न पुनः पित्रादि-पदवतीति तदयुक्तं तत्र प्राच्यकर्त्तृकहोलाकानुष्ठानस्यावश्यकल्पनीयसामान्यश्रुत्यैवोप-पत्तेः नचाप्राच्यानामननुष्ठानार्थं प्राच्यपदवतीकल्प्यतामितिवाच्यं तेषामननुष्ठान-स्यानाचाररूपस्य श्रुतिकल्पनानिमित्तत्वानुपपत्तेः इह तु मन्वादीनां ज्येष्ठपदप्रयोगात् तदुपपत्तये ज्येष्ठपदवत्याएव श्रुतेः कल्पनार्हत्वात् अर्ज्जकपदवत्याएव अवश्यकल्पनीय-त्वाभावात् ज्येष्ठपदवत्या अर्ज्जकपदवत्याश्च कल्पनायां विशेषप्रमाणाभावात् नचान्यथा-र्ज्जकस्य भागद्वयाय श्रुतेरवश्यं कल्पनीयत्वादत्रापि सैव मूलमस्तु लाघवात् ज्येष्ठपदञ्चार्ज्जकपरमस्त्विति वाच्यं वैपरीत्यस्यापिसम्भवात् अत्रैव ज्येष्ठपदयुक्तश्रुति-कल्पनायामर्ज्जकपदस्यापि ज्येष्ठपरत्वकल्पनासम्भवात् विनिगमनाप्रमाणाभावात्। किञ्चैवं लाघववादिना यत्किञ्चित् त्रिचतुरादिपदवतीमेकां श्रुतिमनुमाय सकल-स्मृतिपदानां गौण्या लक्षणया वा वृत्त्या तत्परत्वमपि वाच्यमित्यतीवात्मनः स्मृति-निपुणता निरूपिता। तस्माद्यस्मादेवाचारात् स्मृतिवाक्याद्वा या श्रुतिरवश्यं कल्पनीया तथैव तद्गतस्याचारांशस्य स्मृतिपदस्य च उपपत्तेर्नतत्राधिककल्पनेति होलाकाधिकरणस्यार्थः। अतएव वशिष्ठेन ज्येष्ठस्यांशद्वयमभिधाय उपार्ज्जकस्या-प्यंशद्वयं पृथगभिहितं। यथा; अथ भ्रातृणां दायविभागो द्व्यंशं ज्येष्ठोहरेत्। ततोऽनतिदूरे पुनराह। येन चैषां समुत्पादितं स्यात् सोपि द्व्यंशमेव हरेत्। अनेनार्ज्जकतया भागद्वये दर्शिते ज्येष्ठस्यांशद्वयाभिधानमनर्थकं स्यात्। ...

धनत्वमपि न ज्येष्ठतामात्रेण। तदाह बृहस्पतिः। जन्मविद्यागुणज्येष्ठो द्व्यंशं दायादवाप्नुयात्। समांशभागिनस्त्वन्ये तेषां पितृसमस्तु सः। उपार्जकत्वेन भागद्वयी जन्मविद्यादिकीर्त्तनमनुपयोगि। एतच्च भागद्वयं सोदरमात्रभ्रातृविभागविषयं। सोदरासोदरविभागगोचरस्य ज्येष्ठस्य विंश उद्धारः। यदाह बृहस्पतिः। सवर्णासु ये जाताः सर्व्वे पुत्रा द्विजन्मनां। उद्धारं ज्यायसे दत्त्वा भजेरन्नितरे समं। सवर्णासु बह्वीषु स्त्रीषु जातानां उद्धारपूर्व्वकविभागश्रुतेः भागद्वयं सोदरमात्र-गोचरमेव सिद्ध्यति। युक्तञ्चैतत् सोदरतयाधिकगौरवात्। उद्धारोऽपि दशसु गवादिषु न कार्य्यः। तथामनुः। उद्धारोन दशस्वस्ति सम्पन्नानां स्वकर्मसु। यत्किञ्चिदेवदेयं स्याज्ज्यायसे मानवर्द्धनं तदेवमुक्तप्रकारेण यत्र ज्येष्ठभ्रातुरेव पितृधने भागद्वयं कस्तत्र जनकस्य दानविक्रयपरित्यागक्षमस्य पितामह-धनसम्बन्धमूलस्यातिगुरोः पितुरेव स्वपितृधने भागद्वयं न सम्भवति जन्मविद्यागुण-ज्येष्ठत्वितिवाक्येन न पितृसमत्वेन भागद्वयं ज्येष्ठस्यातिदिशन् पितुर्भागद्वयं ज्ञापयति बृहस्पतिः। जीवद्विभागे तु पिता गृह्णीतांशद्वयं स्वयमिति सामान्येनांशद्वया-भिधानोपदेशो बृहस्पतिना दर्शितः। तथा नारदः। द्व्यंशो प्रतिपद्येत विभजन्नात्मनः पिता। समांशहारिणी माता पुत्राणां स्यान्मृते पतौ। द्रव्यं विभजन् पिता द्व्यंशमात्मनो गृह्णीयात्न पुनरात्मनोद्रव्यं विभजन्निति सम्बन्धः पूर्व्वोक्तविरोधात्। किञ्च पैतामहधने पितापुत्रयोः समभागित्वे यावद्धनं पितु-स्तावदेव पुत्रस्यापीति वाच्यं ननु यावदेव यदेव धनं तावदेव तदेव पुत्रस्यापीति मध्यगत्वापत्तः जायापत्योरिव विभागाभावप्रसङ्गात् एवञ्च सति भ्रातॄणां विभागे यदा ज्येष्ठस्य ज्येष्ठतया भागद्वयकल्पनं तदा तत्पुत्रस्यापि भागद्वयकल्पने पुत्रेण सह ज्येष्ठस्य चत्वारोऽंशाः भ्रात्रन्तरस्यैकोऽंशः स्यात् बहुपुत्रत्वे च ज्येष्ठस्य तत्पुत्राणां पितृसमभाग कल्पने कनिष्ठभ्रातुः यत्किञ्चिदेव स्यादिति महाजन-विरोधः। यच्च बृहस्पतिवचनं। द्रव्ये पितामहोपात्ते स्थावरे जङ्गमे तथा। सममंशित्वमाख्यातं पितुः पुत्रस्य चैव हि। अंशित्वं समं समानं नच स्वेच्छया स्वोपात्तधनवत् न्यूनाधिकविभागं दातुमर्हति न पुनरंशः समइति तस्यार्थः। विपितृकपित्रभिप्रायं वा समभागवचनं तत्र स्यात् सदृशं स्यान्मिति वचनं तु प्रागेव व्याख्यातं किञ्च यवसौ पिता स्वपितुः पुन्नामनरकनिवर्त्तकोऽज्येष्ठ सदा तस्य स्वभ्रातृभ्योपेक्ष्य यत्र पितृसमत्वेन भागद्वयं सुतरां तस्य पुत्रापेक्षया भागद्वयं युक्तं पुत्राणां क्रमागतधनसम्बन्धस्य पित्रधीनत्वात् अथ यःपितुर्ज्येष्ठः पुत्रस्तस्य सत्पुत्रैः सह समांशतोच्यते। तत्र मध्यमादिपुत्राणामप्यध्यर्द्धादिविधानात्

पितृतया भागद्वयस्यैव सुतरां युक्तत्वात्। सामान्येन च पितापुत्रयोः समांशाभिधानस्य भवतो मुनीनां चानुचितत्वात्। किञ्च पितुरंशद्वयाभिधानं स्वोपात्तद्रव्यगोचरमित्यप्यनुपपन्नं तदिच्छानुरोधित्वात् विभागस्य इच्छातश्च भागद्वयत्रयन्यूनाधिकानामपि प्राप्ते र्विफलो विधिः नियमार्थत्वञ्च वचनस्य न वर्णनीयं विध्युविरोधात् तदाह। पिता चेत् पुत्रान् विभजेत् तस्य स्वेच्छा स्वयमुपात्ते ऽर्थे पैतामहे तु पितापुत्रयोस्तुल्यं स्वाम्यं। अस्यार्थः। स्वोपात्ते यावदेव गृहीतुमिच्छति अर्द्धं भागद्वयं त्रयं वा तत्सर्व्वं तस्य शास्त्रानुमतं नतु पैतामहेऽपि। तथाच हारीतः। जीवन्नेव वा पुत्रान् प्रविभज्य वनमाश्रयेत् वृद्धाश्रमं वा गच्छेत् स्वल्पेन वा विभज्य भूयिष्ठमादाय वसेत् यद्युपदस्येत् पुनस्तेभ्यो गृह्णीयात्। अनेन स्वल्पस्य विभागो भूयिष्ठद्रव्यस्य ग्रहणञ्च पितुरभिहितं। वृद्धाश्रमः प्रव्रज्या। यत्तु शङ्खलिखितवचनं। स यद्येकपुत्रः स्यात् द्वौ भागावात्मनः कुर्य्यात्। अस्यायमर्थः। एकस्य पुत्रः एकपुत्रः न पुनरेकएव पुत्रो यस्येति बहुव्रीहिः तस्यान्यपदार्थप्रधानत्वेन षष्ठीतत्पुरुषाद्दुर्ब्बलत्वात् एकपुत्रश्चौरसः तथाविधस्य पितुर्भागद्वयं नतु क्षेत्रजस्य पितृत्वेऽपि। तत्र स्यात् मृदशं साम्यमिति वचनं क्षेत्रजपित्रभिप्रायमेव वर्णनीयं। क्षेत्रजोऽहि द्विपितृकः। तदाह बौधायनः। मृतस्य च प्रसूतो यः क्लीवस्य व्याधितस्य वा अन्येनानुमतो वा स्यात् स्वे क्षेत्रे क्षेत्रजः सुतः स एव द्विपितृको द्विगोत्रश्च द्वयोरपि स्वधाकारी रिक्थभाग्भवति। अस्यार्थः। क्लीवादेः स्वे क्षेत्रे तदनुमतो ऽन्येन प्रसूतः क्षेत्रजः। तथा नारदः। क्षेत्रिकानुमते क्षेत्रे बीजं यस्य प्रकीर्य्यते। तदपत्यं द्वयोरेव बीजिक्षेत्रिकयोर्म्मतं। अतश्चैकपुत्र आत्मनो भागद्वयं कुर्य्यादिति विधौ एकपुत्रत्वस्य कर्त्तृविशेषणतया विवक्षार्हत्वात् उद्देश्यविशेषणत्वेनाविवक्षितत्वमित्यपि परास्तं भवति। किञ्च परमप्रेक्षावन्मनुगौतमदक्षादिप्रयुक्तपदानां प्रतिक्षणमविवक्षामाचक्षाणः स्वस्यैव साक्षादविवक्षितत्वं ख्यापयति। तथा पुत्रार्ज्जितेऽपि धने पितुरंशद्वयं द्वावंशाविति गृह्णीतांशद्वयमिति चाविशेषश्रुतेः। सुव्यक्तमाह कात्यायनः। द्व्यंशहरो ऽर्द्धहरो वा पुत्रवित्तार्ज्जनात् पिता। मातापि पितरि प्रेते पुत्रतुल्यांशभागिनी। पुत्रस्य वित्तार्ज्जनात् पितुर्द्व्यंशहरत्वं अर्द्धहरत्वं वेत्यस्यार्थः। नच पुत्रश्च वित्तञ्चेति पुत्रवित्ते तयोरर्ज्जनात् पिता द्व्यंशहरः पुत्रानर्ज्जनात्तु सर्व्वहर इति वाच्यं अनर्ज्जितपुत्रस्यापि भ्रातृभिर्व्विभागे वित्तार्ज्जनतया अंशद्वयस्येष्टत्वात् कथं सर्व्वहरत्वं अतो विभागार्हसन्निधिं विद्यमाने अर्ज्जकस्य द्व्यंशित्वं असति तु सर्व्वहरत्वं वाच्यं तथाच पितापुत्रयोः प्रमत्तमीतता [illegible]। [illegible] अर्ज्जनं [illegible] नापास्यतीति विभक्तिमिश्र-

मित्यभिधानात् न च पुत्रेषु स्वत्वमस्तीति सर्व्वस्वदाने प्रदर्शितं अतस्तत्र गौणमर्ज्जनपदं वित्ते च मुख्यं न चैतत् मत्कृतस्य सम्भवति। न च पुत्रेणार्ज्जितत्वात् पुत्रस्य द्व्यंशप्राप्तिः पितुश्च भागद्वयस्यावचनाद्धनेऽपि प्राप्तेः समभागत्वापातात् विधानमनर्थकमिति वाच्यं एतद्वचनमन्तरेण पुत्रधने पितुर्भागद्वयस्याप्राप्तेर्वचनस्यार्थवत्त्वात्। किञ्च पुत्रवित्तार्जनादित्यस्य पितृधनविषयत्वे पितुरिच्छातो द्व्यंशहरत्वमर्द्धहरत्वञ्चेत्यनुपपन्नं इच्छानुरोधित्वात् ग्रहणस्य इच्छायाश्चानियतत्वात् सार्द्धपादपादोनांशग्रहणस्यापि सम्भवात् कथं पक्षद्वयमात्रकीर्त्तनं नियमार्थत्वञ्च पितृधनगोचरं न सम्भवतीत्युक्तं प्राक्। अत एव पुत्रार्जितवित्तस्य यथा द्व्यंशहरत्वं तथा तस्यैव वित्तस्यार्द्धहरत्वमिति युक्तं न पुनर्द्व्यंशस्यार्द्धमेकोंऽशस्तद्ग्रहणार्थं वचनं अर्द्धस्य द्व्यंशस्य चैकदेशित्वेन एकदेशिन आकाङ्क्षितत्वात् पुरुषविशेषणतया हरणकर्म्मत्वेन च द्वयोः समत्वात् परस्परसम्बन्धानुपपत्तेः। वित्तार्जनादिति पञ्चम्यन्तेन द्व्यंशरूपैकदेशान्वयार्थोपादानस्याविवादात् अर्द्धपदेनापि तस्यान्वयो युक्तः वित्तार्जनार्द्धपदयोश्चाव्यवधानात् वित्तस्यैवार्द्धं प्रतीयते न पुनर्द्व्यंशस्यार्द्धमेकोंऽशः प्रतीयते स्वायत्ते चैकांशपदे प्रयोक्तव्ये ऽवाचकपदप्रयोगस्यान्याय्यत्वात् वित्तस्यैवार्द्धं युक्तं। तच्च पितृद्रव्योपघातेन पुत्रार्जितवित्तस्यार्द्धं पितुः अर्जकस्य पुत्रस्यांशद्वयं इतरेषामेकैकांशिता अनुपघाते तु पितुरंशद्वयं अर्जकस्यापि तावदेव इतरेषामनंशित्वं। यद्वा विद्यादिगुणसम्पन्नस्य पितुरर्द्धहरत्वं विद्यादिनाऽपि ज्येष्ठस्यैवाधिकांशदर्शनात् विद्यादिशून्यस्य जनकता मात्रेण द्व्यंशित्वं। तेन क्रमागतधनाद्वा पुत्रार्ज्जितधनाद्वा भागद्वयं पिता स्वयं गृह्णीयात् अतोऽधिकमिच्छन्नपि नार्हतीति वचनार्थः। स्वार्ज्जितधनात्तु यावदेव ग्रहीतुमिच्छति तावदेव गृह्णीयात् पुत्राणान्तु पितामहधनात् विंशोद्धारं दत्त्वाऽदत्त्वैव वा विभजेत् स्वोपार्ज्जितधनात् पुनर्गुणवत्त्वेन सम्मानार्थं बहुकुटुम्बत्वेन वा भरणार्थं अयोग्यत्वेन वा कृपया भक्तत्वेन वा प्रसन्नतयाधिकदानेच्छुर्न्यूनाधिकविभागं कुर्व्वन् धर्म्मकारी पिता। तदाह याज्ञवल्क्यः। न्यूनाधिकविभक्तानां धर्म्म्यः पितृकृतः स्मृतः। तथा बृहस्पतिः। समन्यूनाधिका भागाः पित्रा येषां प्रकल्पिताः। तथैव ते पालनीया विनेयास्ते स्युरन्यथा। नारदश्च। पित्रैव तु विभक्ता ये समन्यूनाधिकैर्धनैः। तेषां स एव धर्म्म्यः स्यात् सर्व्वस्य हि पिता प्रभुः। सर्व्वधनप्रभुत्वस्य हेतुत्वात् पैतामहे च तदसम्भवात् न्यूनाधिकविभागः पितृकृतः पितृधनविषय एवायं धर्म्म्यः। तथा च विष्णुः। पिता चेत् पुत्रान् विभजेत् तस्य स्वेच्छा स्वयमुपात्तेऽर्थे पैतामहे तु पितापुत्रयोस्तुल्यं स्वामित्वं। ननु विभागश्चेत् पिता कुर्य्यादिच्छया विभजेत् सुतान्।

ज्येष्ठं वा श्रेष्ठभागेन सर्व्वे वा स्युः समांशिन इति याज्ञवल्क्यवचनात् उद्धाररूप श्रेष्ठभागावगतेः कथं मतोन्यूनाधिकत्वमभिधीयते। उच्यते। उपरते पितरि भ्रातृभिरपि विभागे क्रियमाणे विंशोद्धाररूपश्रेष्ठांशस्य सिद्धत्वाद्वचनानर्थक्यात् न तदर्थत्वं अथ विनाप्युद्धारं समांशतायाः पितृकृताया धर्म्म्यत्वार्थं वचनमुच्यते तत्र न्यूनत्वमेव तर्हि पितृकृतं धर्म्म्यं स्यादित्यविकपदमनर्थकं स्यात्। किञ्च उद्धाराभिप्रायेण समन्यूनाधिकत्ववर्णने इच्छया विभजेदित्यनर्थकं पदं एतदितरपदद्वयेनैव वक्तव्यस्याभिहितत्वात् अस्मन्मते तु इच्छया विभजेदिति स्वोपात्तधनविषयं श्रेष्ठांशतासमानांशतयोस्तु पैतामहधनगोचरत्वमिति न किमप्यनर्थकं। किञ्च। पितर्य्युपरतेऽपि द्विप्रकारो विभागो बृहस्पतिनोक्तः यथा। द्विप्रकारो विभागस्तु दायादानां प्रकीर्त्तितः। वयोज्येष्ठक्रमेणैकः समापरांशकल्पना। ज्येष्ठक्रमेणेत्युद्धारं दर्शयति तथा समांशतापरेति भ्रातृणामपि परस्परविभागस्य द्विप्रकारत्वात् पितृकृतस्य विशेषो न स्यात्। तथा नारदः। पितैव वा स्वयं पुत्रान् विभजेद्वयसि स्थितः। ज्येष्ठं वा श्रेष्ठभागेन यथावास्य मतिर्भवेत्। ज्येष्ठस्य श्रेष्ठभागमभिधाय पुनर्यथा वास्य मतिर्भवेदित्यनेन यादृशे न्यूनाधिकविभागे पितुः पूर्व्वोक्तकारणात् कर्त्तव्यतामतिर्भवेदिति पृथगविधानात् श्रेष्ठभागादन्यएवायं न्यूनाधिकविभागः प्रतीयते। यत्पुन र्नारदवचनं। व्याधितः कुपितश्चैव विषयासक्तचेतनः। अयथाशास्त्रकारीच न विभागे पिता प्रभुरिति तद्व्याधिना आकुलचित्ततया कस्मिंश्चित् पुत्रे क्रोधाद्वा सुभगापुत्रस्नेहाद्वा अयथाशास्त्रं विभजति तद्विषयं पूर्व्वोक्तकारणात्तु शास्त्रीय एव विषमविभागः। यथा कात्यायनः। जीवद्विभागे तु पिता नैकं पुत्रं विशेषयेत्। निर्भाजयेन्न चैवैकमकस्मात् कारणं विना। नैकमधिकदानेन विशेषयेत् नच निर्भाजयेत् विभागशून्यं न कुर्य्यात् कारणं विना उद्धारादिविशेषोऽपि बहूनामेव नैकस्य एकस्यापि च पुत्रस्य कारणं विना विशेषो न कार्य्यः कारणवशात्तु कार्य्यएव एकस्यापीत्यवगते नोद्धारापेक्षो विशेषः किन्तु पितुरिच्छाकृतएवेति यथोक्तएवार्थः। यदि पुनः पितरि जीवति पुत्राएव विभागमर्थयन्ते तदा विषमविभागः पित्रा न दातव्यः। तदाह मनुः। भ्रातृणामविभक्तानां यद्युत्थानं भवेत्सह। न तत्र भागं विषमं पिता दद्यात् कथञ्चन। उद्धारस्तु तदा पित्रा दातव्यएव तस्य विषमविभागरूपत्वाभावात् न्यूनाधिकविभागस्यैव निषेधादिति पितृकृतो विभागः। इदानी मुपरते पितरि भ्रातृणां विभागः कथ्यते। सोऽपि च मातरि जीवन्त्यां सत्यपि पितुरपरमात्मनः स्वामित्वे धर्म्यो न विभागः सोदराणां भवतीति कथ्यते ऊर्द्ध्वं पितुश्च मातुश्चेति उभयोरुपरमे सोदराणां पैतृकधनविभागस्य ज्ञापनात् नपुनर्म्मातृकं

मातृधनविभागार्थं पैतृकपदात् पितृधनमात्रस्यैव विभागावगतेः पैतृकपदस्यैकशेषकल्पनायां प्रमाणाभावात्। किञ्च जनन्यां संस्थितायामित्यनेनैव मातरि मृतायां तदीयधनविभागस्य मनुना वक्ष्यमाणत्वात् ऊर्द्ध्वं मातुरिति पुनरुक्तं स्यात्। यथा याज्ञवल्क्यः। विभजेरन् सुताः पित्रोरूर्द्ध्वमृक्थमृणं समं। मातुर्दुहितरः शेषमृणात्ताभ्य ऋते ऽन्वयः। मातृधनविभागस्य दुहितॄणां सद्भावे अनधिकारः असद्भावे चान्वयपदेन पुत्राणामधिकार इत्युत्तरार्द्धेन प्रतिपादनात् पूर्व्वार्द्धे पित्रोरिति पितृधनविषयमेव अन्यथा पुनरुक्तत्वापत्तेः। मातापित्रोरुपरमे भ्रातरो विभजेरन्निति वदता याज्ञवल्क्येन उभयोरुपरमानन्तरकालस्य विभागार्थतया विधानात् साहित्यं विवक्षितं। तथाच शङ्खलिखितौ। रिक्थमूलं हि कुटुम्बमस्वतन्त्राः पितृमन्तो मातर्य्येवमवस्थितायाः। मातुरपि सकाशादस्वतन्त्रा विभागानधिकारिण इत्याहतुः। सुव्यक्तमाह व्यासः। भ्रातॄणां जीवतोः पित्रोः सहवासो विधीयते। तदभावे विभक्तानां धर्म्मस्तेषां विवर्द्धते। सहवासविधानमुखेन पृथग्भावनिषेधात् पितृमातृजीवनवतश्च विभागनिषेधात् जीवतोरिति साहित्यमविवक्षितं अत एकस्मिन्नपि जीवति विभागो न धर्म्म्यः किन्तु उभयोरभावे यथाह बृहस्पतिः। पित्रोरभावे पुत्राणां विभागः सम्प्रदर्शितः। मातुर्निवृत्तरजसि जीवतोरपि शस्यते। निवृत्तरजस्कायां मातरि जीवन्त्यां विभागस्य मातृधनगोचरत्वानुपपत्तेः उभयाभावोक्त विभागस्यैव जीवतोरपीत्यपिकारेण शस्तत्वकीर्त्तनात् उभयोरभावे भ्रातृविभागः पितृधनगोचर एवावधार्य्यते। अतएव जीवन्त्यां मातरि मातृप्रधानकं विभागं निर्द्दिशति व्यासः। समानजातिसंख्या ये जातास्त्वेकेन सूनवः। विभिन्नमातृकास्तेषां मातृभागः प्रशस्यते। तथा बृहस्पतिः। यद्येकजाता बहवः समाना जातिसंख्यया। सापत्नास्तैर्व्विभक्तव्यं मातृभागेन धर्म्मतः। पुत्राणां जातिसंख्यासाम्येन विभागे विशेषाभावात् मातुरेवायं विभागो न पुत्राणामित्युद्दिश्य विभागः कर्त्तव्यः। तेनेतर मातृधनद्वारापि पुत्राणां मातरि जीवन्त्यां न परस्पर विभागे स्वातन्त्र्यं किन्तु मातुरनुमत्यैव परं विभागो धर्म्म्यः। अतो यद्गौतमादिभिरुक्तं विभागे तु धर्म्मवृद्धिरित्यादि तन्मातुरुपरमे वेदितव्यं। तत्र यद्यविभक्ता एव स्थातुमिच्छन्ति तदा ज्येष्ठ एव योगक्षेमशक्तः सर्व्वं गृह्णीयात् इतरे पितरमिव तमुपजीवेयुः। यथा मनुः। ज्येष्ठ एव तु गृह्णीयात् पित्र्यं धनमशेषतः। शेषास्तमुपजीवेयुर्यथैव पितरं तथा। तथा गौतमः। सर्व्वस्वं वा पूर्व्वजस्य स इतरान् बिभृयात् पितृवत्। वाशब्दात् पृथग्वा भवेयुः सहवा वसेयुः। सहवासश्च सर्व्वेषामिच्छातश्च। यथा नारदः। बिभृयाद्वेच्छतः सर्व्वान् ज्येष्ठो भ्राता यथा पिता।

भ्राता शक्तः कनिष्ठोवाशक्तथपेक्षाकुलस्थितिः। शक्तः सन्कनिष्ठोऽपि सर्व्वान् बिभृयात् मध्यमोऽवदण्डापूपन्यायात् सिद्धः। विभागस्त्वेकस्यापीच्छया भवतीत्युक्तं प्राक्। अतएव विभागं प्रक्रम्याह कात्यायनः। अप्राप्तव्यवहाराणां धनं व्ययविवर्ज्जितं। न्यसेयुर्बन्धुमित्रेषु प्रोषितानां तथैव च। तथा रक्ष्यं बालधनमाव्यवहारप्राप्तेरिति-वचनं। अयञ्च पुत्राणां विभागः पुत्रपौत्रप्रपौत्राणां समानीनात्रोत्पत्तिक्रमेणा-धिकारक्रमः पुत्रादीनां त्रयाणामेव पार्व्वणे तत्पिण्डतद्भोग्यपिण्डद्वयदानाविशेषात्। अतएव देवलः। पिता पितामहश्चैव तथैव प्रपितामहः। उपासते सुतं जातं शकुन्ताइव पिप्पलं। मधुमांसैश्च शाकैश्च पयसा पायसेन च। एषनो दास्यति श्राद्धं वर्षासु च मघासु च। तथा शङ्खलिखितयमाः। पिता पितामहश्चैव तथैव प्रपितामहः। जातं पुत्रं प्रशंसन्ति पिप्पलं शकुनाइव। मधुमांसेन खड्गेन पयसा पायसेन वा। एष दास्यति नस्तृप्तिं वर्षासु च मघासु च। प्रपितामहग्रहणात् पुत्रपदं प्रपौत्रपर्य्यन्तपरं। तदनेन प्रपौत्रपर्य्यन्तस्य श्राद्धदानेन प्रपितामहपर्य्यन्तो-पकारकत्वात् तुल्योदायाधिकारः अतएव जीवत्पितृकयोः पौत्रप्रपौत्रयोरनधिकारः तयोस्तथानधिकारितया पिण्डाप्रदातृत्वात् पित्रोरुपरमे च भ्रातॄणां पितृक्रमो विशेषः परं निवर्त्तते अन्यत् तु सर्व्वमेव प्रत्येतव्य। यदाचैकः पुत्रोऽस्ति अपरस्य पुत्रस्य पुत्राः सन्ति तदा तस्यैको भागः अपरस्य बहूनां तस्य पुत्राणां स्वपितृधीनजन्ममूलत्वा-त्तत्सम्बन्धस्य यावत्येव धने तस्य स्वामित्वार्हत्वं तावत्येव तेषामपि। यच्चानेकपि-तृकाणां तु पितृतोभागकल्पनेति वचनं तस्य नायं विषयः पितृव्यपितुरेव तत् सर्व्वं धनमिति पितृव्यस्यैव सर्व्वं स्यात् न तद्भ्रातुः पुत्राणां। पितृतोभागकल्पने पितापुत्रविभागवद्भागकल्पने पितुर्भागद्वयसम्बन्धात् पितृव्यस्य भागद्वयं भवेत् तद्भ्रातुः पुत्राणां त्वेककोभागः स्यात तदा च शिष्टाचारविरोधः स्यात्। अस्य पुनरेष विषयो यत्रैकस्य भ्रातुरल्पसंख्यकाः पुत्राः सन्ति अपरस्य बहुसंख्यकास्तत्र पितृतोभागकल्पनेति। इदानीं सवर्णभ्रातॄणां विभागो विंशोद्धारादिपूर्व्वकोवा सम एव वेति विकल्पः उद्धारमन्तरेणापि समविभागमाह पितरीत्यनुवृत्तौ हारीतः। समाऽनतो मृते रिक्थविभागः। तथोशना। वर्णानामानुलोम्यानां विभागोऽयं प्रदर्शितः। समत्वेनैकजातानां विभागस्तु विधीयते। तथाच पैठीनसिः। पैतृके विभज्यमाने दायाद्ये समो विभागः। तथा याज्ञवल्क्यः। विभजेरन् सुताः पित्रोरूर्द्ध्वमृक्थमृणं समं। अतः सोद्धारानुद्धारभागयोर्व्विकल्पः। नच केवल-समविभागस्यापि शास्त्रीयत्वान्नित्यवत्सेवानुष्ठानं स्यादिति वाच्यं अन्यतिशयेन भ्रातॄणामुद्धारानुमतेरपि कथञ्चिद्विभागाविभागवद्विकल्पः। अतएवाद्यतनानां

भक्तिविशेषाभावात् समभागएव लोके दृश्यते उद्धारादेर्व्यवहाराभावाच्च । यस्तु स्वयोग्यतामात्रपरामर्शात् पितृपितामहादिधनविभागी निस्पृहः स किञ्चिदेव तण्डुलप्रस्थमपि दत्त्वा तत्पुत्रादेः कालान्तरीयदुरन्ततानिरासार्थं विभजनीयः । तदाह मनुः । भ्रातॄणां यस्तु नेहेत धनं शक्तः स्वकर्म्मणा । स निर्भाज्यः स्वकादंशात् किञ्चिद्दत्त्वोपजीवनं । तथा याज्ञवल्क्यः । शक्तस्यानीहमानस्य किञ्चिद्दत्त्वा पृथक्-क्रिया । पितरि चोपरते सोदरभ्रातृभिर्व्विभागे क्रियमाणे मातेऽपि पुत्रसमांशो दातव्यः । समांशहारिणी मातेतिवचनात् मातृपदस्य जननीपरत्वात् न सपत्नी-मातृपरत्वमपि सकृच्छ्रुतस्य मुख्यगौणत्वानुपपत्तेः समांशता च मातुर्भर्त्रादिभिः स्त्रीधनादाने दत्ते पुनरर्द्धं । पिता च पुत्रेभ्यः समविभागदाने सर्व्वपत्नीनामेव पुत्रसमांशता कर्त्तव्या । तदाह याज्ञवल्क्यः । यदि कुर्य्यात् समानांशान् पत्न्यः कार्य्याः समांशिकाः । न दत्तं स्त्रीधनं यासां भर्त्रा वा श्वशुरेण वा । अधिविन्नस्त्रियै देयमाधिवेदनिकं समं । न दत्तं स्त्रीधनं यासां दत्ते त्वर्द्धं प्रकल्पयेत् । पुत्रहीनाश्च पितुः पत्न्यः समानांशा न पुत्रवत्यः । तथा व्यासः । असुतास्तु पितुः पत्न्यः समानांशाः प्रकीर्त्तिताः । पितामह्यश्च सर्व्वास्ता मातृतुल्याः प्रकीर्त्तिताः । तथा विष्णुः । मातरः पुत्रभागानुसारेण भागहारिण्यः अनूढा दुहितरश्च । पुत्रभागानु-सारेण यथा वर्णक्रमेण पुत्राणाञ्चतुस्त्रिद्व्येकभागिता तथा पत्नीनामपीति । अनूढानां दुहितॄणां पुत्रभागमनुसृत्य तच्चतुर्थांशः । तदाह बृहस्पतिः । समांशा मातरस्तेषां तुरीयांशाश्च कन्यकाः । पुत्रस्य भागत्रयं कन्यकाया एकोभागः । यदाह कात्यायनः । कन्यकानां त्वदत्तानाञ्चतुर्थो भागइष्यते । पुत्राणाञ्च त्रयोभागाः साम्यं स्वल्पधने स्मृतं । अल्पधने पुत्रैः स्वात् स्वादंशादाकृष्य कन्याभ्यश्चतुर्थोऽंशो दातव्यः । यथा मनुः । स्वेभ्योऽंशेभ्यस्तु कन्याभ्यः प्रदद्यु-र्भ्रातरः पृथक् । स्वात् स्वादंशाच्चतुर्भागं पतिताः स्युरदित्सवः । प्रदद्युरिति प्रदानश्रुतेरदाने च पतितत्वश्रुतेर्न कन्याभिरधिकारित्वबुद्ध्या ग्रहीतव्यं नत्वधिकारित्वे भावेऽपरो भ्राता स्वादंशाद्ददाति । यथा याज्ञवल्क्यः । असंस्कृतास्तु संस्कार्य्या भ्रातृभिः पूर्व्वसंस्कृतैः । भगिन्यश्च निजादंशाद्दत्त्वांशन्तु तुरीयकं । भगिनीनां संस्कार्य्यतामाह नाधिकारितां । एवञ्च बहुतरधने विवाहोचित धनं दातव्यं न चतुर्थांशनियमइति सिद्ध्यति । एतच्च कन्यापुत्रयोः समसङ्ख्यत्वे ज्ञातव्यं विषम-सङ्ख्यत्वे च कन्याया एव बहुतरधनं वा स्यात् पुत्रस्य वा निर्धनता स्यात् नचैतदुचितं पुत्रस्य प्राधान्यात् । यच्चेदमत्र बाधकमुक्तं । अविद्यमाने पित्र्यर्थे स्वांशादुद्धृत्य वा पुनः । अवश्यकार्य्याः संस्काराः भ्रातृभिः पूर्व्वसंस्कृतैः । [illegible]-

कर्त्तव्यत्वाद्भगिनीनां संस्कारस्य निरंशतापि न दोषायेति तदयुक्तं भ्रातृसंस्कारार्थत्वादस्य वचनस्य भ्रातॄणां पूर्व्वसंस्कृतेरिति पाठस्यानाकरत्वात् भ्रातृसंस्कारस्य च प्रकृतत्वात् । इदं हि पूर्व्वमुक्तं येषान्तु न कृताः पित्रा संस्कारविधयः क्रमात् । कर्त्तव्या भ्रातृभिस्तेषां पैतृकादेव तद्धनात् । येषांतेषामिति पुंलिङ्गनिर्द्देशात् एतदनन्तर-मेवाविवाहितानामिति वचनारम्भात् भ्रातृसंस्कारार्थमेवेदं वचनं । इति पितृपिता-महादिधनविभागः ।

अथ स्त्रीधनविभागार्थं प्रथमं स्त्रीधनं निरूप्यते । तत्र विष्णुः । पितृमातृसुतभ्रातृदत्तमध्यग्न्युपागतं आधिवेदनिकं बन्धुदत्तं शुल्कान्वाधेयकमिति स्त्रीधनं । अन्वाधेयमाह कात्यायनः । विवाहात् परतो यत्तु लब्धं भर्त्तृकुलात् स्त्रिया । अन्वाधेयं तदुक्तन्तु लब्धं बन्धुकुलात्तथा । ऊर्द्ध्वं लब्धन्तु यत्किञ्चित् संस्कारात् प्रीतितः स्त्रिया । भर्त्तुः पित्रोः सकाशाद्वा अन्वाधेयन्तु तद्भृगुः । बन्धुपदेन मातापित्रोरुपादानं तेनायमर्थः मातापितृद्वारेण सम्बन्धिनां पित्रोश्च सकाशात् यत् तु विवाहात् परतो लब्धं तथा भर्त्तुः सकाशात् भर्त्तृकुलाच्च श्वशुरादितो यल्लब्धं धनं तदन्वाधेयं । विष्णुवचने च बन्धुपदं मातुलाद्यभिप्रायं पित्रादीनां स्वपदेनैव निर्द्दिष्टत्वात् परिणयनसमयलब्धस्य ब्राह्माद्यासुरादिविशेषेण भर्त्तुः पित्रोर्व्वाधिकारात् । स्त्रीधनमाहतुर्म्मनुकात्यायनौ । अध्यग्न्यध्यावाहनिकं दत्तञ्च प्रीतितः स्त्रियै । भ्रातृमातृपितृप्राप्तं षड्विधं स्त्रीधनं स्मृतं । तथा नारदः । अध्यग्न्यध्यावाहनिकं भर्त्तृदायस्तथैव च । भ्रातृदत्तं पितृभ्याञ्च षड्विधं स्त्रीधनं स्मृतं । एतद्व्याकुरुते कात्यायनः । विवाहकाले यत् स्त्रीभ्यो दीयते ह्यग्निसन्निधौ । तदध्यग्निकृतं सद्भिः परिकीर्त्तितं । यत् पुनर्लभते नारी नीयमाना हि पैतृकात् । अध्यावाहनिकं नाम तत् स्त्रीधनमुदाहृतं । पैतृकादित्येकदेशेन पितृमातृकुलात् यल्लभते धनं भर्त्तृगृहं नीयमाना तदध्यावाहनिकं भर्त्तृदायो भर्त्तृदत्तं धनं भर्त्तृदाय-मनभिधाय मन्वादिभिर्भर्त्तृदत्तस्याभिधानात् नारदेनापि भर्त्तृदत्तमनभिधाय भर्त्तृ-दायस्याभिधानात् तथा अन्यत्रापि भर्त्तृदत्ते भर्त्तृदायप्रयोगो दृष्टः । यथा कात्यायनः । भर्त्तृदायं मृते पत्यौ विन्यसेत् स्त्री यथेष्टतः । विद्यमाने तु संरक्षेत् क्षपयेत्तत्कुलेऽ-न्यथा । अस्यार्थः भर्त्तृदत्तं धनं भर्त्तरि मृते यथेष्टं विनियुञ्जीत जीवति तु तद्रक्षेत् इदमुक्तवचनतात्पर्य्यज्ञापनार्थं तथा व्यासवचनमपि भर्त्तृदेयपर्य्यन्तताज्ञापनार्थं । यथा द्विसहस्रपरो दायः स्त्रियैः देयो धनस्य तु । यच्च भर्त्रा धनं दत्तं सा यथा काममाप्नुयात् । द्विसहस्रपर्य्यन्तः स्त्रियै देयो नाधिकः कैमुत्याकाङ्क्षायां भर्त्तृ-श्रुतमन्वेति न पुनरश्रुतकल्पना तथाच देयइति ददाति र्दृक्षः स्यात् सतपतिभवे

तु तावति पत्न्या एव स्वामित्वात् गौणः स चान्याय्यः यत्र भर्तृतदयदत्तं धनंचा-कामगमनीयात् अतोऽपुत्रस्य मृतस्य पत्युर्धने द्विसहस्रपर्य्यन्तएव पत्न्या अधिकारो न सर्व्वत्रेति यदुक्तं तद्विद्भिरनादेयं। एतच्च विस्तरेण वक्ष्यते। आह याज्ञवल्क्यः। पितृमातृपतिभ्रातृदत्तमध्यग्न्युपागतं। आधिवेदनिकश्चैव स्त्रीधनं परिकीर्त्तितं। यत्र द्वितीयस्त्रीविवाहार्थिना पूर्व्वस्त्रियै पारितोषिकं धनं दत्तं तदाधिवेदनिकं अधिकस्त्रीलाभार्थत्वात्तस्य। तथा देवलः। वृत्तिराभरणं शुल्कं लाभश्च स्त्रीधनं भवेत्। भोक्त्री तत्स्वयमेवेदं पतिर्नार्हत्यनापदि। तथा व्यासः। विवाहकाले यत्किञ्चित् वरायोद्दिश्य दीयते। कन्यायास्तद्धनं सर्व्वमविभाज्यञ्च बन्धुभिः। उद्दिश्येति कन्याया इदं भवत्वित्युद्दिश्य वराय यद्दानं न पुनरेतदभिसन्धिं विनापीत्यर्थः अतएव विवाहकालइति प्रदर्शनार्थं न पुनरेतदेव प्रयोजकं दातुरभिसन्धिनिमित्तत्वात् स्वत्वस्य। तथाच प्रामाणिकं वचनं। यद्दत्तं दुहितुः पत्ये स्त्रियमेव तदन्वियात्। मृते जीवति वा पत्यौ तदपत्यमृते स्त्रियाः। विवाहकालइति न विशिनष्टि। अभिसन्धिस्तु दुहित्रन्वयाभिधानादेव लब्धत्वान्नोक्तः। तदेवमव्यवस्थितसङ्ख्यस्त्रीधन-कीर्त्तनात् न षट्सङ्ख्या विवक्षिता किन्तु स्त्रीधनकीर्त्तनमात्रपराणि वचनानि। तदेव च स्त्रीधनं यत्र भर्तृतः स्वातन्त्र्येण दानविक्रयभोगान् कर्त्तुमधिकरोति। तदिदं किञ्चित् सङ्कुच्याह कात्यायनः। प्राप्तं शिल्पैस्तु यद्वित्तं प्रीत्या चैव यदन्यतः। भर्तुः स्वाम्यं भवेत् तत्र शेषन्तु स्त्रीधनं स्मृतं। अन्यतइति पितृमातृ भर्तृकुलव्यतिरिक्तात् यल्लब्धं शिल्पेन वा यदर्ज्जितं तत्र भर्तुः स्वाम्यं स्वातन्त्र्यं अनापद्यपि भर्त्ता ग्रहीतुमर्हति तेन स्त्रिय अपि धनं न स्त्रीधनमस्वातन्त्र्यात् एतद्व्यतिरिक्तधनन्तु स्त्रियाएव दानविक्रयाद्यधिकारात्। तदाह कात्यायनः। ऊढया कन्यया वापि पत्युः पितृगृहेऽथवा। भर्तुः सकाशात् पित्रोर्व्वा लब्धं सौदायिकं स्मृतं। सौदायिकं धनं प्राप्य स्त्रीणां स्वातन्त्र्यमिष्यते। यस्मात्तदा-नृशंस्यार्थं तैर्द्दत्तं तत्प्रजीवनं। सौदायिके सदा स्त्रीणां स्वातन्त्र्यं परिकीर्त्तितं। विक्रये चैव दाने च यथेष्टं स्थावरेष्वपि। सुदायसम्बन्धिभ्यो लब्धं सौदायिकं। स्थावरेऽपि भर्तृदत्तमात्रे स्त्रियाः दानाद्यनधिकारः। तदाह नारदः। भर्त्रा प्रीतेन यद्दत्तं स्त्रियै तस्मिन्मृतेऽपि तत्। सा यथा काममश्नीयात् दद्याद्वा स्थावराहते। भर्तृदत्तविशेषणात् भर्तृदत्त स्थावराहतेऽन्यत् स्थावरं देयमेव भवति अन्यथा यथेष्टं स्थावरेष्वपीति विरुध्येत। भर्त्ता तु यदा दुर्भिक्षादौ स्त्रीधनं विना वर्त्तनाक्षमस्तदा ग्रहीतु मर्हति नान्यदा। यदाह याज्ञवल्क्यः। दुर्भिक्षे धर्म्मकार्य्ये च व्याधौ सम्प्रतिरोधके। गृहीतं स्त्रीधनं भर्त्ता न स्त्रियै दातुमर्हति। अन्यत्र

पुनरनधिकारमाह कात्यायनः। न भर्त्ता नैव च सुतो न पिता भ्रातरो नच। आदाने वा विसर्गे वा स्त्रीधने प्रभविष्णवः। यदि ह्येकतरस्त्वेषां स्त्रीधनं भक्षयेद्बलात्। स वृद्धिं प्रतिदाप्यः स्याद्दण्डञ्चैव समाप्नुयात्। तदेव यद्यनुज्ञाप्य भक्षयेत् प्रीतिपूर्व्वकं। मूलमेव तदा दाप्यो यदा स धनवान् भवेत्। अथ चेत् स द्विभार्य्यः स्यात् नच तां भजते पुनः। प्रीत्या विसृष्टमपि चेत् प्रतिदाप्यः स तद्बलात्। ग्रासाच्छादनवासानामुच्छेदो यत्र योषितः। तत्र स्वमाददीत स्त्री विभागं रिक्थिनां तथा। स्त्रिया धनं गृहीत्वा यद्यपरभार्य्यया सह वसति ताञ्चावजानीते तदा गृहीतधनं राज्ञा बलाद्दाप्यः भक्ताच्छादनादिकं यदि भर्त्ता न ददाति तदा तदपि स्त्रिया आकृष्य ग्राह्यं इति स्त्रीधनलक्षणं।

इदानीं स्त्रीधनविभागोऽभिधीयते। तत्र मनुः। जनन्यां संस्थितायान्तु समं सर्व्वे सहोदराः। भजेरन् मातृकं रिक्थं भगिन्यश्च सनाभयः। इन्द्याग्रवद्योऽपि तत्तुल्यार्थकचकारेण भ्रातृभगिन्योरितरेतरयुक्तयो र्विभागप्रतिपादनात् भगिन्यः सहोदराश्च विभजेरन्नित्ययमेवास्य वचनस्यार्थः। वृहस्पतिरपि चकारात् समुच्चयमाह। स्त्रीधनं तदपत्यानां दुहिता च तदंशिनी। अप्रत्ता चेत् समूढ़ा तु न लभेन्मातृकं धनं। अपत्यपदं पुत्रपरं। तेषामप्रत्ताभि र्दुहितृभिः सह मातृधनविभागः। तथाच शङ्खलिखितौ। समं सर्व्वे सोदर्य्या द्रव्यमर्हन्ति कुमार्य्यश्च। सर्व्वेषां प्रथमं पुत्रोपादानात् सर्व्वावस्थस्य पुत्रस्य मातृधनेऽधिकारः चकारश्रुतिश्च सर्व्वत्रानुगता समुच्चयवाचिका। एतावताप्युदग्राहमल्लस्य देवलवचनं गलहस्तः। यथा सामान्यं पुत्रकन्यानां मृतायां स्त्रीधनं स्त्रियां। अप्रजायां हरेद्भर्त्ता माता भ्राता पितापि वा। इह पुत्रकन्ययोः साधारणं मातृधनमिति सुव्यक्तं केवलकुमार्य्याः सकलमातृधनाधिकारित्वे यौतकधने विशेषवचनं मन्वादीनामनर्थकं स्यात् सर्व्वत्राधिकाराविशेषात्। यः पुनरेवं समाधानं ब्रूते भ्रातृभगिन्योस्तुल्यवज्जननीधनाधिकारत्वे समभागविधानं युक्तं केवल भगिनीनां तदभावे च केवलभ्रातृणां धनसम्बन्धे समं स्यादसुतत्वाद्विशेषस्येति न्यायतएव समत्वप्राप्तेरनर्थकं सममिति। सएवं वाच्यः भ्रातृभगिन्योरप्यधिकारे समं स्यादिति न्यायात् समत्वप्राप्तेरविशेषादानर्थक्यस्य तदवस्थत्वात्। किञ्च केवलभ्रात्रधिकारपक्षेऽपि पितृधनइव मातृधनेऽपि विंशोद्धारादिप्रसक्तिनिवर्त्तकतया समपदस्य सार्थकत्वात् कथमनर्थकता। अतोवचनन्यायानभिज्ञः सर्व्वैः प्रामाणिकैरेषएव किञ्चिज्ज्ञ इति। किन्तु कात्यायनेदेव इतोः पुत्रकुमारीदुहित्रोस्तुल्यवदधिकारः। एतयोश्चान्यतराभावे ऽन्यतरस्य तद्धनं द्वयोरप्येतयोरभावे तु ऊढ़ाया दुहितुः पुत्रवत्याः सम्भावितपुत्रायाश्च तुल्योऽधिकारः

स्वपुत्रद्वारेण पार्व्वणपिण्डदानसम्भवात्। अतएव पूर्व्वोक्तदुहित्रभावे दौहित्रस्यैव धनाधिकारः। दौहित्रोऽपि ह्यमुत्रैनं सन्तारयति पौत्रवत् इतिमनुवचनात् नतु वन्ध्याविधवादुहित्रोः स्वसत्तया स्वजन्यसत्तया च पार्व्वणपिण्डदानाभावात्। अतएव नारदः। पुत्राभावे च दुहिता तुल्यसन्तानदर्शनात्। पौत्रदौहित्रयोस्तु सद्भावे पौत्रस्यैवाधिकारः पुत्रेण परिणीत दुहितुर्व्वाधात् बाधकपुत्रेण बाध्यदुहितृपुत्रबाधस्य न्याय्यत्वात्। उक्तानान्तु सर्व्वेषां दौहित्रपर्य्यन्तानामभावे वन्ध्याविधवयोरपि मातृधनाधिकारिता तयोरपि तत् प्रजात्वात् प्रजाभावे चान्येषामधिकारात्।

यत्तु दुहितृमात्राधिकारार्थं गौतमवचनं स्त्रीधनं दुहितॄणामप्रत्तानामप्रतिष्ठितानां च। यच्च नारदस्य मातुर्दुहितरोऽभावे दुहितॄणां तदन्वयः। यच्च कात्यायनस्य दुहितॄणामभावे तु रिक्थं पुत्रेषु तद्भवेत्। यच्च याज्ञवल्क्यस्य मातुर्दुहितरः शेषमृणात्ताभ्य ऋते ऽन्वयः। तानि पूर्व्वोक्तदेवलादिवचनाविरोधेन यौतकद्रव्यविषयाणि। अतएव मनुः। मातुश्च यौतकं यत् स्यात् कुमारीभाग एव सः। यौतकं परिणयनलब्धं युमिश्रणइतिधातो र्युतइतिपदं मिश्रतावचनं मिश्रता च स्त्रीपुरुषयोरेकशरीरता विवाहाच्च तद्भवति अस्थिभिरस्थीनि मांसैर्मांसानि त्वचा त्वचमितिश्रुतेः अतो विवाहकाले लब्धं यौतकं। अतएव वशिष्ठः। मातुः पारिणाय्यं स्त्रियो विभजेरन्। पारिणाय्यं परिणयनलब्धं धनं। यत्तु मनुवचनं। स्त्रियास्तु यद्भवेद्वित्तं पित्रादत्तं कथञ्चन। ब्राह्मणी तद्धरेत् कन्या तदपत्यस्य वा भवेत्। अत्र पित्रा दत्तमिति-विशेषणात् विवाहसमयादन्यत्रापि यत् पितृ दत्तं तत् कन्याया एवेत्येतदर्थं ब्राह्मणी-पदस्यानुवादः। सदा ब्राह्मणीपदस्य चानर्थक्यभयात् क्षत्रियादिस्त्रीणामनपत्यानां पितृदत्तं धनं सपत्नीदुहिता ब्राह्मणी कन्या हरेत् न पुनरप्रजःस्त्रीधनं भर्त्तुरिति-वचनावकाशप्रतिवचनार्थः। अन्यथा सकलवचनानामसामञ्जस्यं स्यात्। नच वाच्यं नारदादिभिर्दुहितुरभावे दुहितुः पुत्राणामेव धनाधिकारोदर्शितः प्रत्यासन्न-दुहितृपदेनैवान्वयपदस्यान्वयादिति यतो दुहितृपदस्य जन्यविशेषपरत्वेन जनका-काङ्क्षितत्वात् न जन्यान्तरेणान्वयपदोपात्तेन पुत्रेणान्वयः सम्भवति समत्वात्। नचाधिष्ठानलक्षणयान्वयो वाच्यः मातृन्वयेनैव सर्व्वेषां मुख्यत्वसम्भवात् मातृपदान्वये च दुहितृपदस्य मुख्यत्वस्वीकारात्। नच तदन्वयइति तच्छब्दोपात्ताया दुहितुरन्वय-योग्यता वाच्या तच्छब्दस्यापि प्रकृतवाचितया दुहितृत्वरूपेणैवोपपादकत्वात्। किञ्च याज्ञवल्क्यवचने दुहितरइतिपदं प्रथमान्तं ताभ्यइतिपदञ्च पञ्चम्यन्तं अन्वयपदेन षष्ठ्यन्तान्वययोग्येन नान्वीयते किन्तु व्यवहितमपि मातुरित्येवपदमन्वयि तदत्र मातुरन्वये निश्चिते नारदकात्यायनवाक्येऽपि मातुरेवान्वयो न्याय्यः अविरोधात्।

किञ्च सत्सङ्गजेषु तद्गामी स्यर्थो भवतीति बौधायनवचनानुसारेणानन्तर्थाच्च अङ्गजस्य पुत्रस्याधिकारी न्याय्यो नानङ्गजस्य व्यवहितस्य दौहित्रस्याधिकारः। ततश्च परिणयनलब्धस्त्रीधनं दुहितुरेव न पुत्राणां तत्रैव च क्रमार्थं गौतमवचनं स्त्रीधनं दुहितॄणामप्रत्तानामप्रतिष्ठितानाञ्च। प्रथममप्रत्तानां तदभावेप्रत्तानां तदभावे च समूढानां स्त्रीधनं दुहितॄणामिति सामान्यतः प्राप्तत्वात् अप्रत्तानामित्यादेस्तु क्रमार्थत्वेनोपसंहारार्थत्वात्। तथा च याज्ञवल्क्यः। अप्रजःस्त्रीधनं भर्त्तुर्ब्राह्मादिषु चतुर्ष्वपि। दुहितॄणां प्रसूता चेच्छेषेषु पितृगामि तत्। ब्राह्मादिषु विवाहेषु यल्लब्धं अध्यग्निधनं स्त्रिया तस्यां मृतायां प्रथमं दुहितॄणामेव तत्रापि प्रथमं कन्यायास्तदभावे प्रत्तायास्तदभावे परिणीतायाः सर्व्वदुहित्रभावे च पुत्रस्याधिकारः अप्रजःस्त्रीधने भर्त्तुरधिकारात् बृहस्पतिना तु अप्रत्तापदेन अप्रत्ताद्यभावे समूढाया अप्यधिकारः सूचितः। नच यौतकमात्रधनाऽभिप्रायेण नेदं वचनं किन्तु ब्राह्मादि-विवाहेन विवाहिताया यद्यावद्धनं यौतकमयौतकं वा तदभिप्रायेणेति वाच्यं बन्धुदत्तमितिवचनस्य निर्विषयतापत्तेः मनुविरोधाच्च। यदाह ब्राह्मदैवार्षगान्धर्व्व प्राजापत्येषु यद्धनं। अप्रजायामतीतायां भर्त्तुरेव तदिष्यते। यत्त्वस्याः स्याद्धनं दत्तं विवाहेष्वासुरादिषु। अतीतायामप्रजायां मातापित्रोस्तदिष्यते। अस्याः स्याद्दत्तमिति पराचीनं पूर्व्वत्रानुषज्यते तेन विवाहेषु यद्धनं दत्तमिति सम्बन्धात् वैवाहिकधनमात्रप्रतीतेर्न यावद्धनविषयं। तथा यमः। आसुरादिषु यद्द्रव्यं विवाहेषु प्रदीयते। विवाहक्रियायां पूर्व्वापरीभूतायां यद्द्रव्यं प्रदीयतइति यौतकधनमात्र-गोचरत्वमेव प्रतीयते। नच विवाहात् पूर्व्वं परतो वा स्त्रिया लब्धस्याप्रजस्त्रीधनस्य गतेरमूयमाणत्वात् ब्राह्मादिपदं स्त्रीपरमिति वाच्यं पूर्व्वापरलब्धस्य विस्तरेण गतेर्व्वक्ष्यमाणत्वात्।

सम्प्रति अप्रजःस्त्रीधनाधिकारिणः कथ्यन्ते। तत्र याज्ञवल्क्यः। अप्रजः-स्त्रीधनं भर्त्तुर्ब्राह्मादिषु चतुर्ष्वपि। ब्राह्मआदिर्येषां चतुर्णां ते दैवार्ष-प्राजापत्यगान्धर्व्वाश्चत्वारो ब्राह्मेण सह पञ्च भवन्ति। ब्राह्मदैवार्षगान्धर्व्व प्राजा-पत्येष्विति मनुना पञ्चानामुक्तत्वात् तेषु विवाहेषु वर्त्तमानेषु यद्धनं स्त्रियालब्धं तदप्रजायामतीतायां भर्त्तुरेव भवतीति। प्रजा सन्ततिः। न पुनर्ब्राह्मादिना परिणीताया यत् यावद्धनं विवाहात् पूर्व्वं परतो वा तया लब्धं तत् सर्व्वं भर्त्तुरिति व्याख्यानं युक्तं ब्राह्मादिष्विति कालार्थत्वात् निर्द्देशस्य ब्राह्मादिपदानां स्त्रीपरत्वे एकत्वेन षष्ठ्या च निर्द्देशः स्यात् यत्त्वस्याः स्यादिति स्त्रिया एकत्वेन षष्ठ्या च निर्द्दिष्टत्वात्। विवाहकाले लब्धायाञ्च वर्त्तमानसम्बन्धेन लब्धा स्यात् स्त्रीपरत्वे

व्यतिक्रान्तविवाहक्रियासम्बन्धेन लक्षणा जघन्या सा चायुक्ता न च विवाहितस्त्रीवाचकत्वं ब्राह्मादिपदानां तत्तल्लक्षणविवाहपरत्वेन मन्वादिभिर्निर्दिष्टत्वात्। तदाह मनुः। अष्टाविमान् समासेन स्त्रीविवाहान्निबोधतेत्युपक्रम्य ब्राह्मो दैवस्तथैवार्षः प्राजापत्यस्तथासुर इत्यादि। तथा नारदः। अष्टौ विवाहा वर्णानां संस्कारार्थं प्रकीर्त्तिताः। ब्राह्मस्तु प्रथमस्तेषामित्यादि। तथा विष्णुः। अष्टौ विवाहा भवन्ति ब्राह्मो दैव इत्यादि। अतो विवाहकाललब्धस्त्रीधनविषयं ब्राह्मादिवचनमिति विश्वरूपोक्तमादरणीयं। आसुरादिविवाहसमयलब्धन्तु स्त्रीधनं जीवत्यपि भर्त्तरि माता गृह्णीयात् तदभावे पिता मातापित्रोस्तदित्यत्र क्रमावगतेः युगपदधिकारे पित्रोरित्येवाभिदध्यात् कन्याधने च मातुरभावे पितुरधिकारश्रवणात् अत्रापि तथात्वस्यैवोचितत्वात्। तथा बौधायनः। रिक्थं मृतायाः कन्याया गृह्णीयुः सोदराः स्वयं। तदभावे भवेन्मातुस्तदभावे भवेत् पितुः। तदनेन कन्याधनं व्याख्यातं। न च कन्याधन इवात्रापि प्रथमं भ्रातुरधिकारः स्यादिति वाच्यं वचनाभावात् मातापित्रोरेवाधिकारश्रुतेः।

यत् पुनः परिणयानन्तरं पितृमातृभर्तृकुलात् स्त्रिया लब्धं धनं तद्भ्रातृणामेव। तदाह याज्ञवल्क्यः। बन्धुदत्तं तथा शुल्कमन्वाधेयकमेव च। अप्रजायामतीतायां बान्धवास्तदवाप्नुयुः। बन्धुदत्तमिति मातापितृभ्यां यद्दत्तं अतएव तत्पुत्राश्च भ्रातरो बान्धवाः। तदाह वृद्धकात्यायनः। पितृभ्याञ्चैव यद्दत्तं दुहितुः स्थावरं धनं। अप्रजायामतीतायां भ्रातृगामि तु सर्व्वदा। अप्रजस्त्वमात्रनिमित्तत्वेन भ्रातुरधिकारावगतेः सर्व्वदापदेन ब्राह्मादिपञ्चकान्यतमविवाहिताया अप्रजसो धनं भ्रातृगाम्येव भवतीति विश्वरूपोक्तमादरणीयं। स्थावरपदाद्दृष्टान्तन्यायादेवाऽपरस्य धनस्य सिद्धिः। बन्धुदत्तपदेन कन्यादशायां यत् पितृभ्यां दत्तं तदुच्यते विवाहात् परतोलब्धधनस्यान्वाधेय पदेनोपात्तत्वात् विवाहकालीने च भर्तुः पित्रोर्व्वाधिकारात्।

अन्वाधेयमाह कात्यायनः। विवाहात् परतोयत्तु लब्धं भर्तृकुलात् स्त्रिया। अन्वाधेयं तदुक्तन्तु लब्धं बन्धुकुलात्तथा। भर्तृकुलात् श्वशुरादेः बन्धुकुलात् पितृमातृकुलात्। तथापरमाह ऊढा लब्धन्तु यत् किञ्चित् संस्कारात् प्रीतितः स्त्रिया। भर्त्तुः सकाशात् पित्रोर्व्वा अन्वाधेयन्तु तद्भवेत्।

शुल्कमाह। गृहोपस्करवाह्यानां दोह्याभरणकर्म्मिणां। मूल्यं लब्धन्तु यत् किञ्चित् शुल्कं तत् परिकीर्त्तितं। गृहादिकर्म्मिभिः शिल्पिभि स्तत्कर्म्मकरणाय भर्त्रादिभ्यो रक्षार्थं स्त्रियै यदुत्कोचदानं तत् शुल्कं तदेव मूल्यं प्रकृत्यर्थत्वात् व्याजीकत्या

यथा। यदानेतुं भर्त्तृगृहं शुल्कं तत्परिकीर्त्तितं। भर्त्तृगृहगमनार्थमुत्कोचादि यद्दत्तं तत्र भ्रात्रादिष्वविशिष्टं तदेतन्मातृकमप्रजःस्त्रीधनं भ्रातरो गृह्णीयुः न पुनरासुरादिषु विवाहेषु यत् कन्याभ्यः शुल्कदानं तदभिप्रायं आसुरमात्रगोचरत्वात् तच्छुल्कस्य। यथोक्तं याज्ञवल्क्येन आसुरोद्रविणादानाद्गान्धर्व्वः समयान्मिथः। राक्षसोयुद्ध हरणात् पैशाचः कन्यकाच्छलात्। अतोराक्षसादौ शुल्काभावात् शुल्कस्य चार्थ्येषासुरादिष्वेव यद्वत्तं तस्मात्तस्य भ्रातृगामित्वाभिधानं इयं। तथा तस्य स्त्रीधनत्वाभावाच्च पित्रादिगृहीतधनस्य च शुल्कत्वेन कीर्त्तनात्। तथा मनुः। न कन्यायाः पिता विद्वान् गृह्णीयाच्छुल्कमण्वपि। गृह्णन् हि शुल्कं लोभेन स्यान्नरोऽपत्य विक्रयी। पित्रेत्युपलक्षणं तेन भ्रात्रादिरपि धनं गृह्णन् शुल्कयाही तेन पित्रादिगृहीतमेव परं शुल्कं भवतीत्युक्तं। अतो यदुक्तं आसुरएव शुल्करूप-स्त्रीधनसम्भवात् तदेकवाक्योपात्तयोर्व्वन्धुदत्तानुधेययोरप्यासुरविवाहगोचरयोरेव भ्रातुरधिकारइतिनिरस्तं भिन्नकशुल्क रूपस्त्रीधनस्य सर्व्वविवाहेष्वेव सम्भवात् सर्व्वत्रैव भ्रात्रधिकारो वाक्यात् विशेषानवगमात्। तथा गौतमवचनमपि कात्यायनवचन-समानार्थं। यथा भगिनीशुल्कं सोदर्य्याणामूर्द्धं मातुः पितुश्च पूर्व्वं चैके। अस्यार्थः प्रथमं सोदर्य्याणां तेषां पुनरभावे मातुः तदभावे पितुः पूर्व्वंचैकइति परमतं। अतः प्रथमं सोदराणां तदभावे मातुः मातुरभावे पितुः एषां पुनरभावे तद्धनं भर्त्तुः।

यथा कात्यायनः। बन्धुदत्तन्तु बन्धूनामभावे भर्त्तृगामि तत। बन्धूनामभाव-इत्यनेन भ्रातुरभाव इत्यपि सूचितं भ्रातुरभावे पित्रोरधिकारात् दण्डापूपन्यायात् तत्सिद्धेः। भर्त्तृपर्य्यन्ताभावे पुनरिदमुच्यते।

यदाह बृहस्पतिः। मातुः स्वसा मातुलानी पितृव्यस्त्री पितृस्वसा। श्वश्रूः पूर्व्वजपत्नी च मातृतुल्याः प्रकीर्त्तिताः। यदासामौरसो न स्यात् सुतो दौहित्रएव वा। तत् सुतोवा धनं तासां स्वस्रीयाद्याः समाप्नुयुः। औरसपदेन पुत्रकन्ययोरुपादानं तयोः सर्व्वांशवादकत्वात् सुतपदेन च सपत्नीपुत्रस्य सर्व्वासामेकपत्नीनामेका चेत् पुत्रिणी भवेत्। सर्व्वास्ता स्तेन पुत्रेण प्राह पुत्रवतीर्म्मनुरितिमनुः नतु सुतपदमौरसविशेषणं वैयर्थ्यात्। सपत्नी-पुत्रसद्भावेऽपि स्वस्रीयाद्यधिकारापत्तेश्च। औरसपुत्रकन्ययोः सपत्नीपुत्रस्य चाभावे दौहित्रस्याधिकारिता तत्सुतइति तच्छब्देन स्वपुत्रसपत्नीपुत्रयोरुपादानं तेन तत्-पुत्रयोरधिकारी नतु दौहित्रपुत्रस्यापि तस्य पिण्डदाने वर्हिभावात्। तदेषां पुत्रादीनां भ्रात्रादिभर्त्तृपर्य्यन्तानाञ्चाभावे सत्स्वपि श्वशुरभ्रातृश्वशुरादिषु सपिण्डेषु भगिनीपुत्रादीनामधिकारिता अनन्यगते र्वचनात् स्त्रीणां मातृतुल्यत्वप्रतिपाद-

नैनामीषां पुत्रतुल्यत्वज्ञापनेन पिण्डदातृत्वसूचनस्य दायप्रकरणे धनाधिकारज्ञापनैकप्रयोजनकत्वात्। तत्र स्वस्रीयाद्यादिवचनात् भगिनीसुतस्वभर्त्तृभागिनेयदेवरपुत्रभ्रातृश्वशुरपुत्रभ्रातृसुतजामातृदेवराणां पूर्व्वपूर्व्वस्याभावे परपरस्याधिकारे देवरस्यैव सर्व्वशेषेऽधिकारापत्ते र्मन्वाद्यनेकविरोधइति वक्तुवल्लमात्मत्र्य वचनं वर्ण्यते।

तत्र मनुना त्रयाणामुदकं कार्य्यं त्रिषु पिण्डः प्रवर्त्तत इति दायभागप्रकरणे कीर्त्तनात् याज्ञवल्क्येनापि पिण्डदोंऽशहरश्चैषामिति पिण्डदानेनाधिकारदर्शनात् पुत्रस्यापि सातिशयपिण्डदानेन नरकत्राणकारणतया मुख्यभावेनाधिकारावगतेः मातुलोभागिनेयस्य स्वस्रीयोमातुलस्य च। श्वशुरस्य गुरोश्चैव सख्युर्मातामहस्य च एतेषां चैव भार्य्याभ्यः स्वसुर्म्मातुः पितुस्तथा। श्राद्धदानन्तु कर्त्तव्यमिति वेदविदां स्थितिरिति इत्यादिमात्स्यवचनात् अमीषां पिण्डदत्वप्रतिपादनात् अयं पिण्डदानविशेषादधिकारक्रमः। तत्र प्रथमं देवरः तत्पिण्डतद्भर्त्तृपिण्डतद्भर्त्तृदेय पूर्व्वपुरुषत्रयपिण्डदातृत्वात् सपिण्डत्वाच्च तद्धनेऽधिक्रियते। तदभावे भ्रातृश्वशुरदेवरयोः सुतः तत्पिण्डतद्भर्त्तृपिण्डतद्भर्त्तृदेयपूर्व्वपुरुषद्वयपिण्डदातृत्वात् सपिण्डत्वाच्च पितृव्यस्त्रीधनेऽधिकारी। तदभावे त्वसपिण्डोपि भगिनीपुत्रः तत्पिण्ड तत्पुत्रदेयतत्पित्रादित्रिपिण्डदानात् मातृस्वसृधनेऽधिकारी। तदभावे स्वभर्त्तृभागिनेयः पुत्रात् भर्त्तृर्दुर्बलत्वात् तत्स्थानपातिनोरपि तथैव बलाबलस्य न्याय्यत्वात् तद्भर्त्तृदेयपूर्व्वपुरुषत्रयपिण्डदानात् तत्पिण्डदानात् तद्भर्त्तृपिण्डदानाच्च मातुलानीधनेऽधिकारी। तदभावे भ्रातृसुतः तत्पितृपितामहयोस्तस्याश्च पिण्डदानात् पितृस्वसृधनेऽधिकारी। तस्याप्यभावे श्वशुरयोः पिण्डदानात् जामाता श्वश्रूधनेऽधिकारीति अयं क्रमो बोध्यः स्वस्रीयाद्या इति तु नक्रमार्थं किन्त्वधिकारिमात्रज्ञापनार्थपरं। एषां पुनरेतेषामभावे श्वशुरभ्रातृश्वशुरादेः सपिण्डानन्तर्य्यक्रमो धनाधिकारे बोद्धव्यः। नच सपिण्डाभावे सर्व्वमिदं वचनमिति वाच्यं अस्यामधिकारिशृङ्खलायां देवरदेवरसुतयोः भ्रातृश्वशुरसुतस्य चाधिकारज्ञापनात् आसन्नतरश्वशुरादेः परित्यागात् अतोवचनार्थापरिज्ञानकृतो व्यवहारः प्रमाणपरतन्त्रैरतन्नो कर्त्तव्यः। इत्यतिगहनमुक्तमपजःस्त्रीधनं। सम्प्रति विभागानधिकारिणः कथ्यन्ते तत्पर्य्युदासेनाधिकारिज्ञापनार्थं। तत्रापस्तम्बः। सर्व्वे हि धर्म्मयुक्ता भागिनो द्रव्यमर्हन्ति यस्त्वधर्म्मेण द्रव्याणि प्रतिपादयति ज्येष्ठोऽपि तमभागं कुर्व्वीतेति। इदं वालेनांकुलो क्त्य पठितं यस्तु धर्म्मेण द्रव्याणि प्रतिपादयति ज्येष्ठस्तं पितृसमभागं कुर्व्वीतेति तदनाकरं। तथा अपपात्रितस्य रिक्थपिण्डोदकानि निवर्त्तन्ते। अपपात्रितो भिन्नीदकीकृतः। तथा वृहस्पतिः। सवर्णा गोप्यगुणवान्नार्हः स्यात् पैतृके धने।

तत्पिण्डदाः श्रोत्रिया ये तेषां तदभिधीयते। उत्तमर्णाधमर्णेभ्यः पितरं त्रायते सुतः। अतस्तद्विपरीतेन नास्ति तेन प्रयोजनं। तया गवा किं क्रियते या न धेनुर्न गर्भिणी। कोऽर्थः पुत्रेण जातेन यो न विद्वान् न धार्म्मिकः। शास्त्र-शौर्य्यार्थरहितस्तपोविज्ञान वर्ज्जितः। आचारहीनः पुत्रस्तु मूत्रोच्चारसमस्तु सः। आपस्तम्बस्यायमर्थः पित्रादेरौर्द्ध्वदैहिकस्य कर्म्मणोऽसंस्कृतः सुतः श्रेष्ठो नापरो वेदपारगइति पुन्नाम्नोनरकात् यस्मात् त्रायते पितरं सुत इत्यादिवचनेन पुत्रकर्त्तव्यतया महाफलश्रुते सत्कर्म्मवेतनं धनसम्बन्धित्वं अतस्तदकुर्व्वतःकुतो वेतनं। अतएवाह मनुः। सर्व्वएव विकर्म्मस्था नार्हन्ति भ्रातरो धनं। तथा अनंशौ क्लीवपतितौ जात्यन्ध वधिरौ तथा। उन्मत्तजड़मूकाश्च ये च केचिन्निरिन्द्रियाः। क्लीवश्च कात्यायनेन दर्शितः। न मूत्रं फेनिलं यस्य विष्ठा चाप्सु निमज्जति। मेढ्रश्चो-न्मादशुक्राभ्यां हीनः क्लीवः स उच्यते।

जातिपदमन्धवधिराभ्यां सम्बध्यते। वर्णानुच्चारको मूकः। वेदग्रहणासमर्थो जड़ः। तदाह याज्ञवल्क्यः। पतितस्तत्सुतः क्लीवः पङ्गुरुन्मत्तको जड़ः। अन्धो ऽचिकित्स्यरोगाद्यां भर्त्तव्यास्ते निरंशकाः। पद्भ्यां न गच्छतीतिपङ्गुः। निरंशकत्वेऽपि पतिततत्सुतव्यतिरिक्ता भर्त्तव्याः। तदाह देवलः। मृते पितरि न क्लीवकुष्ठ्युन्मत्तजड़ान्धकाः। पतितः पतितापत्यं लिङ्गी दायांशभागिनः। तेषां पतितवर्ज्जेभ्यो भक्तवस्त्रं प्रदीयते। तत्सुताः पितृदायांशं लभेरन् दोषवर्ज्जिताः। लिङ्गी प्रव्राजितादिः। पतितपदेन तत्सुतस्याप्युपादानं पतितोत्पन्नत्वेन पतितत्वात्। तदाह बौधायनः। अतीतव्यवहारान्। ग्रासाच्छादनैर्व्विभृयुः अन्धजड़क्लीवव्यसनिव्याधितादींश्चाकर्म्मिणः पतिततज्जातवर्ज्जं। तत्र नारदः। पितृद्विट् पतितः षण्ढो यश्च स्यादौपपातिकः। औरसा अपि नैतेऽंशं लभेरन् क्षेत्रजाः कुतः। आह कात्यायनः। अक्रमोढ़ासुतश्चैव सगोत्राद्यस्तु जायते। प्रव्रज्यावसितश्चैव न रिक्थं तेषु चार्हति। हीनवर्णस्त्रीपरिणयनानन्तरं। उत्तमवर्णस्त्रीपरिणयने द्वयोरप्यक्रमोढ़ात्वं तयोः सगोत्रात् नियुक्तादुत्पन्नः क्षेत्रजः पुत्रो नार्हति धनं अक्रमोढायामपि सवर्णेन परिणेत्रा उत्पादितः पुत्रो धनाधिकारी क्रमोढ़ायामसवर्णे जातोपि। तदाह कात्यायनः। अक्रमोढ़ासुतस्त्वृक्थी सवर्णश्च यदा पितुः। असवर्णप्रसूतश्च क्रमो-ढ़ायाञ्च योभवेत्। प्रतिलोमप्रसूतोयस्त्याः पुत्रो न रिक्थभाक्। ग्रासाच्छा-दनमात्रं तु देयं यद्बन्धुभिर्म्मतं। बन्धूनामप्यभावे तु पित्र्यं द्रव्यं तदाप्नुयात्। सपिण्डं तद्धनं प्राप्तं दापनीया न बान्धवाः। अस्ति च क्लीवादीनां दारपरिग्रहः।

यद्यर्थिता तु दारैः स्यात् क्लीवादीनां कथञ्चन। तेषामुत्पन्नतन्तूनामपत्यं दायमर्हति। तन्तुरपत्यं। न चापुंस्त्वात् क्लीवस्य जननासामर्थ्यात् अध्ययनाभावात् मूकादेरुपनयनाभावेन पतितत्वात् कथं दारसम्भव इति वाच्यं क्लीवस्य पत्न्यान्येन पुत्रोत्पादसम्भवात् उपनयनानर्हस्यानुपनीतत्वे शूद्रवदपतितत्वात् तेनैतेषां यथासम्भवमौरसक्षेत्रजाः क्लीवत्वादिशून्याः स्वपित्रनुसारेण भागहारिणः। दुहितरश्च परिणयनं यावद्भर्त्तव्याः अपुत्राश्च स्त्रियो यावज्जीवं। यदाह याज्ञवल्क्यः। औरसाः क्षेत्रजास्त्वेषां निर्द्दोषा भागहारिणः। सुताश्चैषां प्रभर्त्तव्या यावद्वै भर्त्तृसात्कृताः। अपुत्रा योषितश्चैषां भर्त्तव्याः साधुवृत्तयः। निर्व्वास्या व्यभिचारिण्यः प्रतिकूलास्तथैव च।

सम्प्रति विभाज्यमविभाज्यञ्चोच्यते। तत्र कात्यायनः। पैतामहञ्च पित्र्यं च यच्चान्यत् स्वयमर्जितं। दायादानां विभागे तु सर्व्वमेतद्विभज्यते। यच्चान्यदिति चकारः स्वयमित्यनेन सम्बध्यते स्वयञ्चार्जितमिति चकारादन्यस्यापि तदर्ज्जनं साधारणधनद्वारेणेत्यर्थः। अनुपघातोपात्तमविभाज्यमाह तुल्यमनुविष्णू। अनुपघ्नन् पितृद्रव्यं श्रमेण यदुपार्ज्जयेत्। स्वयमीहितलब्धं तन्नाकामो दातुमर्हति। पितृद्रव्योपघाताभावेन द्रव्यद्वारेण नेतरेषां व्यापारः स्वचेष्टालब्धत्वेन शारीरोऽपि व्यापारो नेतरेषामिति अर्ज्जकस्यैव तदसाधारणं स्वयमीहितलब्धं तदिति हेतुत्वेनोपन्यासात्। तथाच व्यासः। अनाश्रित्य पितृद्रव्यं स्वशक्त्याप्नोति यद्धनं। दायादेभ्यो न तद्दद्याद्विद्यालब्धन्तु यद्भवेत्। स्वशक्तिमात्रेण यत् प्राप्तमिति सामान्येनाभिधानात् सर्व्वमेवंविधं स्वीयमसाधारणं द्रव्यं। स्वशक्तिप्राप्तस्यापि विद्याधनस्य समाधिकविद्यैः साधारणत्वात् न्यूनविद्याविद्यनिराकरणार्थं विद्यालब्धपदं। तथा याज्ञवल्क्यः। पितृद्रव्याविरोधेन यदन्यत् स्वयमर्ज्जितं। मैत्रमौद्वाहिकञ्चैव दायादानां न तद्भवेत्। मैत्रादिग्रहणं प्रदर्शनार्थं एवमादिषु प्रायेणानुपघातसम्भवात्। तथा मनुः। विद्याधनन्तु यद्यस्य तत्तस्यैव धनं भवेत्। मैत्रमौद्वाहिकञ्चैव माधुपर्किकमेव च। तथा व्यासः। विद्याप्राप्तं शौर्य्यधनं यच्च सौदायिकं भवेत्। विभागकाले तत्तस्य नान्वेष्टव्यं स्वरिक्थिभिः। पितृपितृव्यादिभ्यः सुदायसम्बन्धिभ्यः प्रसादादिना लब्धं सौदायिकं। तथा नारदः। शौर्य्यभार्य्याधने हित्वा यच्च विद्याधनं भवेत्। त्रीण्येतान्यविभाज्यानि प्रसादो यश्च पैतृकः। भार्य्याप्राप्तिकाले लब्धं भार्य्याधनं औद्वाहिकमित्यर्थः। एतानि वर्ज्जयित्वा अन्यद्विभजेदित्यनुवर्त्तते वाक्यान्तरीयं। तदेवमादिभिः शौर्य्यादिधनत्वमविभाज्यत्वे कारणं नोच्यते शौर्य्याद्यर्ज्जितस्यापि विभागश्रुतेः। तथा व्यासः। साधारणं समाश्रित्य यत् किञ्चिद्वाहनायुधं। शौर्य्यादिनाप्नोति धनं भ्रातरस्तत्र भागिनः। तस्य भागद्वयं देयं शेषास्तु समभागिनः।

साधारणद्रव्येणार्ज्जितस्य धनस्य विभागं वदति। तथा नारदः। कुटुम्बं बिभृयाद् भ्रातुर्यो विद्यामधिगच्छतः। भागं विद्याधनात्तस्मात् स लभेताश्रुतोऽपि सन्। बिभृयादित्येकवचननिर्द्देशात् यदि विद्यामभ्यस्यतो भ्रातुः कुटुम्बमपरो भ्राता स्वधनव्ययशरीरायासाभ्यां सम्बर्द्धयति तदा तद्विद्योपार्ज्जितधने तस्याप्यधिकारः। तथा। वैद्यो ऽविद्याय नाकामो दद्यादंशं स्वतो धनात्। पितृं द्रव्यं समाश्रित्य न चेत्तेन तदर्ज्जितं। पितृपदं साधारणधनपरं तदमाश्रित्यार्ज्जितं वैद्योऽविद्याय अनिच्छन्न दद्यात् वैद्याय विदुषे पुनः साधारणमन्तरेणाप्यर्ज्जितं दद्यादेव। तथा गौतमः। स्वयमर्ज्जितमवैद्येभ्यो वैद्यः कामं न दद्यात्। असाधारणधनशरीर व्यापारार्ज्जितं स्वयमर्ज्जितं अविद्वद्भ्यो दातुमनिच्छन् न दद्यात् विद्वद्भ्यः पुनर्द्दद्यादेव। एतच्च विद्याधनमात्रविषयं। तदाह कात्यायनः। नाविद्यानान्तु वैद्येन देयं विद्याधनं क्वचित्। समविद्याधिकानान्तु देयं वैद्येन तद्धनं। तन्नोच्चरितविद्यापदं उभाभ्यां समाधिकपदाभ्यां सम्बध्यते तेन समविद्याधिकविद्यानां दातव्यं न्यूनविद्याऽविद्ययोः पुनरनधिकारः। तदेवमादिवचनैर्विद्याशौर्य्यादिधनेष्वपि साधारणधनोपघातानुपघाताभ्यां विभागाविभागयोरवगमात् तस्यैव प्रयोजकत्वात् तत्पदवत्येव श्रुतिः कल्पनीया उपघातार्ज्जितं विभजेदिति न पुनः शौर्य्यादिपदवत्यां अवश्यकल्पनीयसामान्यश्रुतिकल्पनयैवोपपत्तेः होलाकाधिकरणन्यायस्यायमेव विषयः। यद्वा न्यायप्राप्त एवायमर्थः यद्येनार्ज्जितं तत्तस्मिन् जीवति तस्यैव असति विशेषवचने। यत्र पुनः साधारणधनमात्रेणैकस्य व्यापारो ऽपरस्य धनशरीराभ्यां तत्रैकस्यैको भागो ऽपरस्य भागद्वयं न्यायावगतमेव निवर्त्तं। एतेन चैतदपि निरस्तं यत् साधारणधनोपघाते सति यस्य यावतोंऽशस्य स्वल्पस्य महतो वोपघातः तस्य तदनुसारेण भागकल्पना कार्य्या। किञ्च कात्यायनवचनं। विभक्ताः पितृवित्ताच्चेदेकत्र प्रतिवासिनः। विभजेयुः पुनर्द्व्यंशं स लभेतोदयो यतः। इदं संसृष्टस्य साधारणधनोपघातेनार्ज्जकस्य भागद्वयं इतरेषामेकैको भाग इति श्रीकरेण व्याख्यातं तेनानुपघातार्ज्जितमर्ज्जकस्यैव धनं संसृष्टत्वेऽपि न पुनस्तद्धनं साधारणमित्यभिप्रायो मुनेर्व्याख्यातुश्च लक्ष्यते अनुपघातार्ज्जिते भागविशेषानभिधानात् एवञ्चेत् संसृष्टवदविभक्तस्यापि तथात्वमेव युक्तं विभागप्रागभावे तत् प्रध्वंसेऽपि एकत्र प्रतिवासस्य इतरविशेषात् साधारणधनोपघातार्ज्जिते ऽर्ज्जकस्य भागद्वयमिति ज्ञापनार्थत्वेन वचनस्याप्युपपत्तेः न केवलं संसृष्टविषयत्वं युक्तं होलाकाधिकरणस्यावेव जागरूकत्वात्। किञ्चोपघातार्ज्जिते ऽर्ज्जकस्य भागद्वयमिति तावन्निर्व्विवादं साधारणं समाश्रित्य यत् किञ्चिद्वाहनायुधं। शौर्य्यादिनाप्नोति धनं भ्रातरस्तत्र भागिनः।

तस्य भागद्वयं देयं शेषास्तु समभागिनः इत्यनेनोपघातएव भागद्वयस्य विधानात् असाधारणधनशरीरव्यापारार्ज्जिते तु न भागद्वयं न्याय्यं किन्त्वधिकं सर्व्वमेव वा किञ्चिदूनं वा तत्र किञ्चिदूनस्य मुनिभिर्निबन्धृभिश्चानुक्तत्वात्। साधारणधन-व्यापारेण भ्रात्रन्तरस्य भागदर्शनात् तदभावे भागाभावएव युक्तः। द्विरंशंचि-तुरित्येतस्य च न्यायमूलत्वमेव युक्तं अन्यथा श्रुतिकल्पने अर्जकत्वानुप्रवेशोवा पृथग्वाधिकारी कल्पनीयः स्यात्। तस्मादनुपघातार्ज्जितमर्ज्जकस्यैव नेतरेषामिति सिद्धं। विद्याविभक्तार्जितं सर्व्वं विभजेयुरिति न तावत् सामान्येन वचनं कल्पनीयं शौर्य्यादिधने पर्य्युदासदर्शनात्। तथा मनुः। विद्याधनन्तु यद्यस्य तत्तस्यैव धनं भवेत्। मैत्रमौद्वाहिकञ्चैव माधुपर्किकमेव च। तथा मनुविष्णू। अनुपघ्नन् पितृद्रव्यं श्रमेण यदुपार्जयेत्। स्वयमोहित लब्धन्तन्नाकामो दातुमर्हति। अनु-पघ्नन्निति विद्यादिधनेऽपि द्रव्यव्ययं सत्युपघाते विभागवचनदर्शनात्। तथा याज्ञवल्क्यः। पितृद्रव्याविरोधेन यदन्यत् स्वयमर्जितं। मैत्रमौद्वाहिकञ्चैव दायादानां न तद्भवेत्। क्रमादभ्यागतं द्रव्यं हृतमभ्युद्धरेत्तु यः। दायादेभ्यो न तद्दद्याद्विद्यया लब्धमेव च। तथा नारदः। शौर्य्यभार्य्याधने हित्वा यच्च विद्याधनं भवेत्। त्रीण्येतान्यविभाज्यानि प्रसादो यश्च पैतृकः। तथा व्यासः। विद्याप्राप्तं शौर्य्यधनं यच्च सौदायिकं भवेत्। विभागकाले तत्तस्य नान्वेष्टव्यं स्वरिक्थिभिः। सौदायिकं सुदायसम्बन्धिभ्यो यल्लब्धं। पितामहेन यद्दत्तं पित्रा वा प्रीतिपूर्व्वकं। तस्य तन्नापहर्त्तव्यं मात्रा दत्तञ्च यद्भवेत्। अनाश्रित्य पितृद्रव्यं स्वशक्त्याप्नोति यद्धनं। दायादेभ्यो न तद्दद्यात् विद्यालब्धञ्च यद्भवेत्। तदेवमादिवचने यौवतर्व्वर्णान्तरालानां सङ्कीर्णजातानां सकलधियानिमित्तस्य सौदायिकस्य च स्वजनदत्तस्य च तथा मित्रविवाहमधुपर्कप्राप्तस्य शौर्य्येण च युद्धादिना प्राप्तस्य कृषिसेवावाणिज्यादिना च श्रमेणोपार्ज्जितस्य अनुपघातेन च स्वशक्तिमात्रार्ज्जितस्य पर्य्युदासात् सर्व्वमेव पर्य्युदस्तमिति तदितराभावात् निर्व्विषयो विधिः अथ यथा-कथञ्चिदेको द्वौ वा विषयो लभ्यते तदा तदेव स्वपदेन निर्द्देष्टुमुचितं मुनीनां अभिभक्तार्ज्जितममुकधनं विभजेदिति लाघवात् स्वपदात् शीघ्रप्रतीतेश्च ननु शौर्य्यादिधनेतरतया बहुतरपदप्रयोगापत्त्या गौरवात् पर्य्युदासत्वे च सर्व्वमुनिभिरेव सकलपर्य्युदसनीयपदानुकीर्त्तनं कर्त्तव्यं तद्विना तदितरज्ञानानुपपत्तेः मुनीनां पर्य्युदासवचनं बालप्रलपितमिव स्यात् प्रदर्शनार्थत्वे तु अनास्थया केनचित् किञ्चित् कीर्त्तितं केनचिच्च किञ्चिदिति युक्तं सर्व्वस्याकीर्त्तनं तस्मात् साधारणधनोपघातार्ज्जितं धनं विभजेदिति विधिः शौर्य्यादिपदञ्च वाक्येषु प्रदर्शनार्थं अतोऽविभक्तार्जितत-

मात्रेण धनस्य साधारणत्वाभिधानमप्रामाणिकं। किञ्च। क्रमादभ्यागतं द्रव्यं हृतमभ्युद्धरेत्तु यः। दायादेभ्यो न तद्दद्यात् विद्यया लब्धमेव च। अत्र याज्ञवल्क्य-वचनेऽपि पितृपितामहादिधनमपि केनचिदपहृतं योऽभ्युद्धरेत् तस्यैव तत्रान्येषामि-भवतोऽपि सम्मतं तेन पूर्व्वसम्बन्धलेशे सत्यपि अविभक्तानामप्यभ्युद्धारकत्वेन तत्र सम्बन्धं निराकुर्व्वन् अपूर्व्वत्वेन स्वार्ज्जिते सुदूरमेवान्येषां सम्बन्धं निरस्यति। यच्चोक्तं श्रीकरेण यदि पितृद्रव्यानुपघातार्ज्जितमर्ज्जकस्यैव तदा प्रतिग्रहोपात्तं धनं न कदाचित् भ्रातृत्तरस्य भवेत् नहि प्रतिग्रहः पितृद्रव्यविनाशेन सम्भवति द्रव्यं हि दातृगाननमनमुखेन प्रतिग्रहे उपयुज्यते एकहायन्यादिकमिव सोमक्रये कर्त्तृ शरीरधारणेन वा पयोव्रतादिकमिव ज्योतिष्टोमे तत्र तावददृष्टार्थे दाने द्रव्यान्तर-ग्रहणेन न दातुरानतिरपेक्षितेति न दानानत्या द्रव्यमुपयुज्यते प्रतिग्रहस्य चाल्प-कालीनत्वात् न तत्कर्त्तृभोजनमपेक्षितं दीर्घकालीनज्योतिष्टोमेनेव स्वर्गकर्त्तुरिति तन्मन्दं दापकानत्यर्थमुपहारप्रदानादिना धनोपघातस्य लोके बहुलमुपलम्भात् कलौ च प्रतिग्रहधनस्य सेवाधनसमानत्वात् अतएव कलौ त्वनुगमान्वित इति स्मरन्ति। यच्च चिरावस्थिते व्यभिचारात् न प्रतिग्रहकारणत्वमानतेरत आनतिद्वारा न प्रतिग्रहार्थत्वं द्रव्यस्येत्युक्तं तन्मन्दतरं आनतिद्वारेण चिराश्रयणादीनां प्रतिग्रह-कारणत्वात् पुरुषस्याशयवैचित्र्येण कस्यचिद्धनदानेन कस्यचिच्चिराश्रयणादिना कस्यचित्तत्तद्गुणानुसन्धानमात्रेण दर्शनात् सहकार्य्यभावेन कार्य्यानुत्पत्तेर्नी-कारणता अतएवोक्तं आनतेरनियतोपायपरिणामत्वादिति। यदप्युक्तं अथ तत्-सन्निधिमन्तरेण प्रतिग्रहस्यासम्भवात् भोजनमन्तरेण च तदयोगात् तस्यां स्थितौ व्याप्रियमाणं धनं प्रणाल्या प्रतिग्रहं निष्पादयतीति तदा ज्योतिष्टोमादिकर्म्मणः प्राचीनमपि भोजनं शरीरस्थितौ व्याप्रियमाणं प्राचीनशरीरस्थितिमन्तरेण ज्योति-ष्टोमाद्यनिष्पत्तेः प्रणाल्या ज्योतिष्टोमार्थमिति सर्व्वमेव भोजनं क्रत्वर्थं स्यात् न पुरुषार्थं तथाच तत्साधनमपि द्रव्यं क्रत्वर्थं स्यात् तदर्ज्जनोपायोऽपि क्रत्वर्थं स्यादिति पुरुषार्थत्वं द्रव्यार्ज्जनस्य द्रव्यस्य भोजनस्य च हीयेतेति तन्मन्दतमं प्रणाल्या ज्योतिष्टोमोपकारकत्वेऽपि भोजनस्य साक्षात् तृप्त्यर्थत्वात् पुरुषार्थस्यैव सतः क्रतूपकारकत्वात् तवेदमर्थे प्रमाणाभावात् उपकारकत्वस्य तादर्थ्यव्यभिचारात् अतःकथं द्रव्यार्ज्जनस्य द्रव्यस्य भोजनस्य च क्रत्वर्थत्वमापद्यतइति। अतएवास्यापि पर्य्यनुयोगस्यानवकाशः यदि द्रव्यस्य प्राचीनभोजनद्वारा प्रतिग्रहोपकारकत्वमिष्यते तदा जन्मत आरभ्य भोजनं विना शरीरावस्थितेरभावात् नार्ज्जनं सम्भवतीति सर्व्वएव धनोपायः पितृद्रव्यविनाशेन स्यात् अतोऽनुपपन्नं पितृद्रव्यमिति विशेषणं न

स्यादिति। यतोविशेषणानर्थक्यादेव भक्षणाद्युपभोगोपयुक्तधनोपघातादन्यस्यैवोपघातादिरूपस्य वचनार्थत्वात्। किञ्च भक्षणाद्युपभोगार्थधनोपघातस्य गृहस्थेनावश्यं कर्त्तव्यत्वात् न धनार्जनार्थत्वमुपघातस्य तादर्थ्यमेव च तत्प्रयोजकमिति नातिप्रसक्तिः। अतएवोक्तं विश्वरूपेण पितृद्रव्यं दत्त्वा यदि नोपार्ज्जितं धनं तदा तस्यैवासाधारणं वैवाहिकवदेवोक्तं न तु भक्षणाद्युपभोगमात्रेण तस्य स्तन्यपानादितुल्यत्वादित्यन्तेन। अतएव पुत्रोपनयनविवाहयोः सोत्सुकस्य व्ययपितृकृतबहुतरधनव्ययेऽपि न व्रतभिक्षादिलब्धस्य वैवाहिकस्य वा साधारण्यं धनप्रेप्सया धनव्ययस्याकृतत्वात् तस्माद्धनोद्देशेनैव साधारणधनोपघातेनार्ज्जितं साधारणं नान्यदिति सिद्धं। जितेन्द्रियेणापि बहुप्रकारं विमृश्योक्तं तदस्य यावदुक्तप्रपञ्चस्य संक्षेपेणायमर्थः प्रत्येतव्यः यत् किञ्चिद्धनमसाधारणोपायार्ज्जितं तदसाधारणं विस्पष्टार्थं तु विद्याधनन्तु यद्यप्येतन्यायेनोदाहरणप्रपञ्चेनोपन्यस्तं असाधारणत्वादेवाविभाज्यमेवंविधमेव धनं साधारणमपि साधारणहेतुसमुत्थमेवंविधमेव तदपि सुखावबोधार्थं क्वचिदर्थसाधारण्येन क्वचिद्व्यापारतयात्वेन सम्बन्धसाधारण्येन च प्रदर्शितमित्यन्तेन। वाचकेनाप्युक्तं नह्येकेनभ्रात्रा विद्यादिना लब्धे ऽपरेषामधिकारसम्भवः प्रमाणाभावादित्यन्तेन। यच्चानुपघातप्रतिग्रहार्ज्जितधनस्य विभागः शिष्टानां दृश्यते स भ्रातृस्नेहेन पौरुषबुद्ध्या वा नानुपपन्नः। यद्वा प्रतिग्रहधनस्य विद्याधनत्वात् विद्याधने च साधारणधनानुपघातार्ज्जितेऽपि समविद्याधिकविद्यानां विभागस्य वाचनिकत्वात् तद्विभागं पश्यन्तो विद्याधनस्य विद्याविशेषकृतोऽयं विभागइत्यजानन्तो ऽविभक्तार्ज्जितत्वेनायं विभागइति भ्रान्ताः स्वयमपि तथैव व्यवहृतवन्तः तन्मूलश्चापरापरव्यवहारइति न किञ्चिदनुचितं। यत् पुनर्म्मनुवचनं। यत् किञ्चित् पितरि प्रेते धनं ज्येष्ठो ऽधिगच्छति। भागोयवीयसां तत्र यदि विद्यानुपालिनः। तस्यायमर्थः। पितेव पालयेत् पुत्त्रान् ज्येष्ठोभ्रातॄन्यवीयसः। पुत्त्रवच्चानुवर्त्तेरन् ज्येष्ठे भ्रातरि धर्म्मतः एतस्माद्वचनात् पितापुत्त्रवदवस्थानात् पित्रर्ज्जितवच्चानुपघातार्ज्जितेऽपि ज्येष्ठधने कनिष्ठानामधिकारः एतावान् परं विशेषः पित्रर्ज्जिते ऽविदुषामप्यधिकारो ज्येष्ठार्ज्जिते पुनर्व्विदुषामेव। एतच्च पितरि प्रेतइति ज्येष्ठइति यवीयसामिति विद्यानुपालिनइतिपदप्रयोगस्यानर्थक्यात् सिध्यति। तस्मादविभक्तार्ज्जितत्वमात्रेणाविभक्तभ्रातॄनगरस्यभवतीत्ययुक्तं वचनं।

तत्र विद्याधनं तावदभिधीयते। तत्र कात्यायनः। उपन्यस्ते तु यल्लब्धं विद्यया पणपूर्व्वकं। विद्याधनन्तु तद्विद्यात् विभागे न नियोजयेत्। शिष्यादार्त्विज्यतः प्रश्नात् सन्दिग्धप्रश्ननिर्णयात्। स्वज्ञानशंसनात् वादात् लब्धं प्राध्ययनाच्च यत्। विद्याधनन्तु

तत् भ्रातृविभागं न नियुज्यते। शिल्पेष्वपि हि धर्म्मोऽयं मूल्याद्यच्चाधिकं भवेत्। परं निरस्य यल्लब्धं विद्यया द्यूतपूर्व्वकं। विद्याधनन्तु तद्विद्यादविभाज्यं बृहस्पतिः। यदि भवान् मद्वशमुन्नयति तदा भवते मया एतावद्देयमिति पणितं तदीपन्यासं निर्णीय लभते तत्र विभाज्यं शिष्यादध्यापितात्। आर्त्विज्यतः यजमानात् दक्षिणादिना लब्धं दक्षिणा च न प्रतिग्रहो वेतनरूपत्वात् तस्याः। तथा यत्किञ्चित्विद्यायां प्रश्ने निर्णीय अपणितमपि यदि कश्चित् परितोषाद्ददाति। तथा योऽस्मिन् शास्त्रार्थे मम संशयमपनयति तस्मै सुवर्णमिदं ददामीत्युपस्थितस्य संशयमपनीय यल्लब्धं वादिनोर्व्वा सन्देहे न्यायकरणार्थमागतयोः सम्यङ् निरूपणेन यल्लब्धं षष्ठांशादिकं। तथा शास्त्रादिषु स्वप्रकृष्टज्ञानं विभाव्य यत् प्रतिग्रहादिना लब्धं। तथा द्वयोः शास्त्रविज्ञानविवादे ऽन्यत्रापि यत्र कुत्रचिदन्योन्यज्ञानविवादे निर्ज्जित्य यल्लब्धं। तथैकस्मिन् देये बहूनामुपप्लवे येन प्रकृष्टमधीत्य यल्लब्धं तथा शिल्पादिविद्यया चित्रकारसुवर्णकारादिभिर्लब्धं। द्यूतेनापि परं निर्ज्जित्य यल्लब्धं तत् सर्व्वमविभाज्यमितरैः। तदयमर्थो यया कयाचिद्विद्यया यल्लब्धमर्ज्जकस्यैव तत् नेतरेषां प्रदर्शनार्थं तु कात्यायनेन विस्तरेणोक्तं श्रीकरादिभ्रमनिरासार्थं। अतः स्वज्ञानख्यापनादिना यत् प्रतिग्रहलब्धं तदपि विद्याधनमेव विद्ययैव विदुषे प्रतिग्रहदानात्। तथा यमः। विद्याशीलोधर्म्मयुक्तः प्रशान्तः क्षान्तोदान्तः सत्यवादी कृतज्ञः। वृत्तिग्लानोगोहितो गोशरण्योदाता यज्वा ब्राह्मणः पात्रमाहुः। अव्रतानाममन्त्राणां जातिमात्रोपजीविनां। नैषां प्रतिग्रहोदेयो न शिला तारयेच्छिलां। विद्वत्तयैव पात्रत्वात् अविदुषाञ्चापात्रत्वात् अतो यत् केनचिदुक्तं विद्याधनन्तु विद्याध्यापननिमित्तं यत् तदुच्यते इति तदुक्तवचनादर्शनेनेति इयमेव विद्याशब्दस्य विद्याज्ञानद्वयस्याज्ञातोर्निष्पत्तेशीलवचनात्। यच्च प्रतिग्रहधनस्यापि विद्याधनत्वेन याजनाध्यापनप्रतिग्रहाणां सङ्कीर्णत्वमापादितं श्रीकरेण तदतिमन्दं विद्याधनत्वसामान्यस्य याजनाध्यापनप्रतिग्रहादिनानाव्यक्तिसम्बन्धेऽपि व्यक्तीनामसङ्कीर्णत्वात् तदापि याजनाध्यापनस्याप्रतिग्रहत्वात् गोत्वसमवायेऽपिनीलकपिलकापोतिकादिव्यक्तीनामसङ्कीर्णत्वस्याविवादात् अतएव शिष्यादार्त्विज्यतः प्राप्तयोर्विद्याधनत्वं अरन्मुनिर्य्याजनाध्यापनयोः सङ्गात् कथं न बिभेति। अतः पणग्रहणमात्रेण तदभिधानमिति ध्येयं।

शौर्य्यादिधनमाह कात्यायनः। आहृत्य संशयं यत्र प्रसभं कर्म्म कुर्व्वते। तस्मिन् कर्म्मणि तुष्टेन प्रसादः स्वामिना कृतः। तत्र लब्धन्तु यत् किञ्चिद्धनं शौर्य्येण तद्भवेत्। ध्वजाहृतं भवेद्यत्तु विभाज्यं नैव तत् स्मृतं। संग्रामादाहृतं

यत्तु विजित्य क्षिपिता बलं। स्वाम्यर्थं जीवितं त्यक्त्वा तद्ध्वजाहृतमुच्यते। वैवाहिकन्तु तद्विद्याद्भार्य्यया यत् समागतं। भार्य्याप्राप्तिकाले लब्धमित्यर्थः।

तथाऽपरमप्यविभाज्यमाह मनुर्मनुविष्णु। वस्त्रं पत्रमलङ्कारं कृतान्नमुदकं स्त्रियः। योगक्षेमप्रचारञ्च न विभाज्यं प्रचक्षते। वस्त्रमङ्गयोजितं पंक्ति परिच्छदार्थञ्च। पत्रं वाहनं अश्वादि। अलङ्कारं अङ्गुलीयकादि। कृतान्नं लड्डुकादि। उदकं कूपवापीगतं प्रचारोपयुक्तं। स्त्रियो दासीव्यतिरिक्ताः। योगक्षेमप्रचारं क्रव्यासन भोजनाचमनाद्युपयुक्तभाजनादीनि। तथा व्यासः। अविभाज्यं सगोत्राणामासहस्रकुलादपि। याज्यं क्षेत्रञ्च पत्रञ्च कृतान्नमुदकं स्त्रियः। याज्यं यागस्थानं देवता वा नतु याजनलब्धं धनं तस्य विद्याधनत्वेनैव गतार्थत्वात्। तथा कात्यायनः। गोप्रचारश्च रथ्या च वस्त्रं यच्चाङ्गयोजितं। प्रयोज्यं न विभाज्यन्तु शिल्पार्थं तु बृहस्पतिः। प्रायोज्यं यद्यस्य प्रयोजनार्हं यथा श्रुताढ्यो पुस्तकादि तत्मुख्यं विभजनीयं शिल्पोपयुक्तञ्च शिल्पिनामेव गातहिदां। तथा शङ्खलिखितौ। न वास्तुविभागो नोदकपात्रालङ्कारानुपयुक्तवाससामपां प्रचाररथ्यानां विभागश्चेति प्रजापतिः। पितरि जीवति यस्मिन् वासौ येन गृहोद्यानादिकं कृतं तत्तस्याविभाज्यं पितुरप्रतिषेधेनानुमतत्वात्। तथा पैतामहमपि द्रव्यं यच्चिरं नष्टं अक्षमत्वात् अथवा प्रतीकारपराङ्मुखतया इतरैरप्रतिकृतं पित्रा स्वधनव्ययशरीरायासाभ्यां प्रतिकृतं तत्पितुरेव न साधारणं। यथा मनुः। पैतृकं तु पिता द्रव्यमनवाप्तं यदाप्नुयात् न तत् पुत्रैर्भजेत् सार्द्धमकामः स्वयमर्ज्जितं। पैतृकं द्रव्यं पुत्रैरनवाप्तमप्रतिकृतं। अनवाप्यमिति अनवाप्येतिपाठावनाकरी। आह बृहस्पतिः। पैतामहं हृतं पित्रा स्वशक्त्या यदुपार्ज्जितं। विद्याशौर्य्यादिना प्राप्तं तत्र स्वाम्यं पितुः स्मृतं। प्रदानं स्वेच्छया कुर्य्याद्भोगञ्चैव ततोधनात्। तदभावे तु तनयाः समांशाः परिकीर्त्तिताः। स्वशक्त्येत्यसाधारणधनशरीरव्यापारं दर्शयति। वचनद्वयेऽपि पितृपदमुपलक्षणं स्वयमर्ज्जितमिति हेतोरभिधानात् एवञ्च स्वार्ज्जिताक्रमागतद्रव्यवदेव क्रमागतेऽप्येवंरूपे भूमिव्यतिरिक्ते व्यवस्था बोद्धव्या। भूमौ तु विशेषमाह शङ्खः। पूर्व्वनष्टान्तु यो भूमिमेकएवोद्धरेच्छ्रमात्। यथाभागं भजन्त्यन्ये दत्त्वा भागं तुरीयकं। यद्यपि असाधारणधनशरीरव्यापारमेवकारेण दर्शयति तथापि उद्धर्त्तुर्नासाधारण्यं किन्तु प्रतिकृतभूमेश्चतुर्थांशोऽधिकस्तस्मै दातव्यः भूमिपदसामर्थ्यात् तदविवक्षाकारणाभावात्। इतिविभाज्याविभाज्यनिरूपणं।

संप्रति विभागानन्तरजातस्य विभागः कथ्यते। तत्र मनुनारदौ। ऊर्द्ध्वं विभागाज्जातस्तु पित्र्यमेव हरेद्धनं। संसृष्टास्तेन वा ये स्युर्व्विभजेत स तैः सह।

यदि पिता पुत्रान् विभज्य स्वयञ्च यथाशास्त्रं भागं गृहीत्वा पुत्रैरसंसृष्टएव मृतः तदा विभागानन्तरं जातः पितृधनमेव गृह्णीयात्। सएव तत्सभागः अथ कैश्चित्पुत्रैःसहसंसृष्टः पिता मृतः तदा संसृष्टेभ्योभागं गृह्णीयात्। तथाच गौतमः। विभक्तजः पित्र्यमेव। विभागानन्तरं यस्य गर्भाधानं स विभक्तजः विभक्तेन जनितः गर्भाधानादृते जनकस्य जननव्यापाराभावात् अतोयद्यज्ञात-गर्भायामेव स्त्रियां विभक्ताः पुत्राः तदनन्तरं जातोभ्रातृभ्यएव भागं गृह्णीयात् न केवलमेकएव किन्तु बहवोऽपि विभक्तजाताः पित्र्यमेव धनं गृह्णीयुः। यदाह बृहस्पतिः। पित्रा सह विभक्ता ये सापत्ना वा सहोदराः। जघन्यजाश्च ये तेषां पितृभागहरास्तु ते। अनीशः पूर्व्वजः पित्र्ये भ्रातृभागे विभक्तजः। विभागात् पूर्व्वं जातः पित्र्ये धने ऽनधिकारी विभक्तजश्च भ्रातृधने। तथा पुत्रैः सह विभक्तेन पित्रा यत् स्वयमर्ज्जितं। विभक्तजस्य तत् सर्व्वमनीशाः पूर्व्वजाः स्मृताः। यथा धने तथर्णेऽपि दानाधानक्रयेषु च। सर्व्वशब्दात् बहुतरमपि धनं पित्रार्ज्जितं विभक्तजस्यैव। परस्परमनीशास्ते मुक्त्वाशौचोदकक्रियाः। अशौचोदकक्रियाभाव-प्रदर्शनेन सुदूरमेव धनाधिकारं निरस्यति। इदञ्च पितृपात्तधनमात्रविषयं। यदि तु पैतामहधनमपि भूम्यादिकं विभक्तं तदा नष्टनविभागं भ्रातृभ्यएव गृह्णीयात् मातुर्निवृत्ते रजसि तद्विभागविधानात्। तदाह विष्णुः। पितृविभक्ता विभक्तान-न्तरोत्पन्नस्य विभागं दद्युरिति। तथा याज्ञवल्क्यः। विभक्तेषु सुतोजातः सवर्णायां विभागभाक्। दृश्याद्वा तद्विभागः स्यादायव्ययविशोधितात्। पित्र्यमेव हरेद्धनमिति विरोधात् उपयुक्तेश्च क्रमागतधनविषयमिदं।

अथ विभागानन्तरागतविभागः। तत्र बृहस्पतिः। कृते ऽकृते विभागे वा रिक्थी यत्र प्रदृश्यते। सामान्यञ्चेन्नवेद्यत्त् तत्र भागहरस्तु सः। ऋणं चेत्तं गृहं क्षेत्रं यस्य पैतामहं भवेत्। चिरकालप्रोषितोऽपि भागभागागतस्तु सः। गोत्रसाधारणं त्यक्त्वा योऽन्यदेशं समाश्रितः। तद्वंशस्यागतस्यांशः प्रदातव्यो न संशयः। तृतीयः पञ्चमश्चैव सप्तमोवापि योभवेत्। जन्मनामपरिज्ञाने लभेतांशं क्रमागतं। यं परम्परया मौलाः सामन्ताः स्वामिनं विदुः। तदन्वयस्यागतस्य दातव्या गोत्रजैर्मही। तदनेन चिरप्रोषितवंश्येन समन्ताद्वासिभिर्मौलैरात्म-ज्ञापनपूर्व्वकं भागग्रहणं कार्य्यं। इति विभागानन्तरागतविभागः।

सम्प्रत्येकपितृकाणां सवर्णानुलोमपरिणतस्त्रीजातानां पुत्राणां विभागः कथ्यते। अस्ति च सवर्णानुलोम स्त्रोपरिणयनं।

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शूद्रस्य पुनरपरिणीतादास्यादिशूद्रापुत्रः पितुरनुमत्या पुत्रान्तरतुल्यांशहरः। तदाह मनुः। दास्यां वा दासदास्यां वा यः शूद्रस्य सुतो भवेत्। सोऽनुज्ञातो हरेदंशमिति धर्मो व्यवस्थितः। अनुमतिमन्तरेण त्वर्द्धांशहरः। तदाह याज्ञवल्क्यः। जातोऽपि दास्यां शूद्रेण कामतोऽंशहरो भवेत्। मृते पितरि कुर्युस्तं भ्रातरस्त्वर्द्धभागिनं। परिणीतास्त्रीजातभ्रातृशून्यस्तु सर्व्वमेव धनं गृह्णीयात् यदि दौहित्रो नास्ति। तदाह याज्ञवल्क्यः। अभ्रातृको हरेत् सर्व्वं दुहितॄणां सुताद्दते। सति तु दौहित्रे समं विभज्य गृह्णीयात् विशेषाश्रवणात्। तथाह्यपरिणीताजातत्वेऽप्यस्य पुत्रत्वात् अपरस्य तु परिणीतासन्तानत्वेऽपि दौहित्रत्वात् तुल्यांशस्यैव युक्तत्वात्।

सम्प्रति पुत्रिकाकरणानन्तरमौरसपुत्रे जाते तयोर्व्विभागः प्रतिपाद्यते। तत्र पुत्रिकौरसयोस्तुल्यांशित्वं न पुनः पुत्रिकाया ज्येष्ठत्वेन विंशोद्धारादिता तदाह मनुः। पुत्रिकायां कृतायान्तु यदि पुत्रोऽनुजायते। समस्तत्र विभागः स्यात् ज्येष्ठता नास्ति हि स्त्रियाः। स्वतो ज्येष्ठपुत्रकार्य्याकरणात् स्वपुत्रद्वारेण पुत्रिकायाः पिण्डदातृत्वात्। तदाह मनुः। अपुत्रोऽनेन विधिना सुतां कुर्व्वीत पुत्रिकां। यदपत्यं भवेदस्यां तन्मम स्यात् स्वधाकरं। न च पुत्रिकायामेव प्रथमं पुत्रे जाते तदनन्तरमौरसपुत्रोत्पत्तौ पुत्रिकापुत्रस्य ज्येष्ठांशता भवेदिति वाच्यं तस्य पौत्रत्वात्। तदाह मनुः। अकृता वा कृता वापि यं विन्देत् सदृशात् सुतं। पौत्री मातामहस्तेन दद्यात् पिण्डं हरेद्धनं। पुत्रिका हि पुत्रस्तस्याः पुत्रः पौत्र एव भवति तद्वांश्च पौत्रो भवति न च ज्येष्ठत्वेन पौत्रस्यांशातिरेकः श्रुतोऽस्ति। यत्तु वशिष्ठवचनं। अभ्रातृकां प्रदास्यामि तुभ्यं कन्यामलङ्कृतां। अस्यां यो जायते पुत्रः स मे पुत्रो भवेदिति पुत्रिकापुत्रस्यैव पुत्रत्वं वदति तेन पुत्रिकायास्तत्पुत्रस्य च पुत्रत्वं तत् मनुविरोधात् पिण्डदानमात्रयोगात् पुत्रत्वमस्य गौणं तद्द्वारेणैव पुत्रिकायाः पिण्डदातृत्वात् एकस्य स्वतोऽन्यस्य तद्योगात्। पुत्रिकौरसयोस्तु सवर्णत्वे सति पूर्व्वोक्तविभागो बोद्धव्यः असवर्णत्वे तु तयोरसवर्णौरसपुत्रवदेव विभागः पुत्रिकौरसयोः समानत्वात्। यदि च कृतापि पुत्रिका पुत्रमनुत्पाद्यैव विधवा भूता वन्ध्यात्वेन हि वावधृता तदा तस्याः पितृधने ऽनधिकारः स्वधाकरपुत्रार्थं पुत्रिकायाः कृतत्वात् तदभावे दुहित्रन्तरतुल्यत्वात्। औरसेन तु क्षेत्रजादीनां विभागे ये पितृसवर्णा औरसपुत्रावोत्तमसमवर्णाः पुत्रिकापुत्रक्षेत्रजकानीनगूढजापविद्धसहोढपौनर्भवदत्तकस्वयमुपागतकृतकक्रीताः पुत्राः ते औरसपुत्रभागस्य तृतीयांशभागिनः। तदाह द्वादशपुत्रानभिधाय देवलः। एते द्वादश पुत्रास्तु सन्तत्यर्थमुदाहृताः। आत्मजाः परजाश्चैव लब्धा यादृच्छिकास्तथा। तेषां षट् बन्धुदायादाः पूर्व्वेऽन्ये पितुरेव षट्।

विशेषश्चापि पुत्राणामानुपूर्व्व्या विशिष्यते। सर्व्वे ह्यनौरसस्यैते पुत्रा दायहराः स्मृताः। औरसे पुनरुत्पन्ने तेषु ज्यैष्ठ्यं न विद्यते। तेषां सवर्णा ये पुत्रास्ते तृतीयांशभागिनः। हीनास्तमुपजीवेयुर्ग्रासाच्छादनसम्भृताः। औरसादयः षट् न केवलं पितृदायहराः किन्तु बन्धूनामपि सपिण्डादीनां दायहरा, अन्ये परभूताः पितुरेव परं दायहराः न सपिण्डादीनां औरसपुत्रशून्यस्य पितुः सर्व्व हराः औरसे सति ये पितृसवर्णास्ते तृतीयांशहराः। पुत्रिकाया अपि औरसतुल्यत्वादयमेव भागक्रमः। येतु पितुर्हीनवर्णा औरसपुत्राद्धीनवर्णास्ते औरसस्य पञ्चमं षष्ठं वांशं गुणवदगुणतया गृह्णीयुः। यथा मनुः। षष्ठन्तु क्षेत्रजस्यांशं प्रदद्यात् पैतृकाद्धनात्। औरसो विभजन् दायं पित्र्यं पञ्चममेव वा। देवलवचनेन सर्व्वेषां क्षेत्रज तुल्यत्वाभिधानात् मनुवचने क्षेत्रजपदमुपलक्षणं।

येतु पितुरौरसाच्च भ्रातुर्हीनवर्णास्ते ग्रासाच्छादनमात्राधिकारिणः। तदाह मनुः। एक एवौरसः पुत्रः पित्र्यस्य वसुनः प्रभुः। शेषाणामानृशंस्यार्थं प्रदद्यात्तु प्रजीवनं। तथा कात्यायनः। उत्पन्ने त्वौरसे पुत्रे तृतीयांशहराः स्मृताः। सवर्णा असवर्णास्तु ग्रासाच्छादनभागिनः। मनुवचने शेषपदं कात्यायनवचने चासवर्णपदं हीनवर्णपरं देवलेनैकवाक्यत्वात्। अनियोगोत्पन्न क्षेत्रजस्य औरसेन सह विभागमाह मनुः। यद्येकरिक्थिनौ स्यातामौरसक्षेत्रजौ सुतौ। यद्यस्य पैतृकं रिक्थं स तद्गृह्णीत नेतरः। यस्य बीजाद्यो जातः स तस्य धनं गृह्णीयात् इतरो ऽन्यबीजजो न गृह्णीयादित्यर्थः। अतएव नारदः। द्वौ सुतौ विवदेयातां द्वाभ्यां जातौ स्त्रिया धने। तयोर्यद्यस्य पित्र्यं स्यात् स तद्गृह्णीत नेतरः। यत् पितृदत्तं यद्धनं स्त्रियास्तत्पुत्रस्तद्बीजजस्तद्धनं गृह्णीयात् नान्यस्तयस्तु किं विस्तरेण।

अथापुत्रस्य मृतस्य धने परस्परविरुद्धवचनदर्शनेन व्याख्यातारो विवदन्ते। तथा बृहस्पतिः। आम्नाये स्मृतितन्त्रे च लोकाचारे च सूरिभिः। शरीरार्द्धं स्मृता जाया पुण्यापुण्यफले समा। यस्य नोपरता भार्य्या देहार्द्धं तस्य जीवति। जीवत्यर्द्धशरीरेऽर्थं कथमन्यः समाप्नुयात्। सकुल्यैर्विद्यमानैस्तु पितृमातृसनाभिभिः। असुतस्य प्रमीतस्य पत्नी तद्भागहारिणी। पूर्व्वं प्रमीताग्निहोत्रं मृते भर्त्तरि तद्धनं। विन्देत् पतिव्रता साध्वी धर्म्मएष सनातनः। जङ्गमं स्थावरं हेम कुप्यं धान्यं रसाऽम्बरं। आदाय दापयेच्छ्राद्धं मासषाण्मासिकादिकं। पितृव्यगुरुदौहित्रान् भर्त्तुः स्वस्रीय-मातुलान्। पूजयेत् कव्यपूर्त्ताभ्यां वृद्धानाथातिथीन् स्त्रियः। तत्सपिण्डा बान्धवा वा ये तस्याः परिपन्थिनः। हिंस्युर्धनानि तान् राजा चौरदण्डेन शासयेत्। तदेतैः सप्तवचनैरपुत्रस्य मृतस्य यद्यावद्धनं स्थावरजङ्गमहेमादिकं भर्त्तुस्तत्

सर्व्वं सोदरभ्रातृपितृव्यदौहित्रादिषु सत्स्वपि पत्न्याएवेति ये तु तद्वचनद्वये प्रतिपन्नाः स्वयमेव वा गच्छन्ति ते चौरवद्दण्डनीया इतिवाक्यौ बृहस्पतिः पत्नीसद्भावे पितृभ्रातृप्रभृतीनां धनाधिकारं सुदूरं निरस्यति। तथा याज्ञवल्क्यः। पत्नी दुहितरश्चैव पितरौ भ्रातरस्तथा। तत्सुतो गोत्रजो बन्धुः शिष्यः सब्रह्मचारिणः। एषामभावे पूर्व्वस्य धनभागुत्तरोत्तरः। स्वर्य्यातस्य ह्यपुत्रस्य सर्व्ववर्णेष्वयं विधिः। अनेन पूर्व्वं पूर्व्वस्याभावे परपरस्याधिकारं वदन् सर्व्वेभ्यः पूर्व्वं पत्न्याएव धनाधिकारमभिधत्ते। तथा विष्णुः। अपुत्रस्य धनं पत्न्यभिगामि तदभावे दुहितृगामि तदभावे पितृगामि तदभावे मातृगामि तदभावे भ्रातृगामि तदभावे भ्रातृपुत्रगामि तदभावे सकुल्यगामि तदभावे बन्धुगामि तदभावे शिष्यगामि तदभावे सहाध्यायिगामि तदभावे ब्राह्मणधनवर्ज्जं राजगामि। अनेनापि क्रमपरेण प्रथमं पत्न्याएव धनाधिकारी निरूपितः। नच वर्त्तनोपयुक्तधनमात्राधिकारार्थं पत्नीवचनमिति वाच्यं सकृच्छ्रुतस्य धनपदस्य पत्न्यपेक्षमकृत्स्नपरत्वं कृत्स्नपरत्वञ्च भ्रात्राद्यपेक्षमिति तात्पर्य्यभेदस्यान्याय्यत्वात्। अतः कृत्स्नधनगोचरएव पत्न्या अधिकारो वाच्यः। तथा वृहन्मनुः। अपुत्रा शयनं भर्त्तुः पालयन्ती व्रते स्थिता। पत्न्येव दद्यात् तत्पिण्डं कृत्स्नमंशं लभेत च। तत्पिण्डमित्यतस्तदित्यनुषज्यते तच्छब्देन भर्त्तुः परामर्षात् भर्त्तुः कृत्स्नमंशं पत्नी लभेत ननु स्वाम्यकृत्स्नमित्यर्थः कृत्स्न स्वाम्योद्देशेन लभेतेति विधानानुपपत्तेः स्वामिभावज्ञापनार्थत्वादस्य नच स्वाम्ये स्वामिभावज्ञापनमर्हति स्वाम्यज्ञापनेनैव ज्ञातत्वात् नच ग्रहणविधानार्थं तदिति वाच्यं स्वधनग्रहणस्य रागादेव प्राप्तत्वात् नच नियमार्थं वचनमिति वाच्यं अदृष्टार्थत्वापत्तेः नियमे च नियोज्यादिकल्पनमपि स्यात्। यच्चोक्तं गच्छनन्यादिः पुत्रोऽंशं कृत्स्नं लभेतइत्युक्तेपि नांशं कृत्स्नमंशमिति किं तर्हि कृत्स्नं स्वाम्यमिति तथात्रापि कृत्स्नं स्वाम्यापेक्षमिति तन्न अनन्यादिः पुत्रोऽंशं कृत्स्नं लभेतेति वचनाभावात् दृष्टान्तानुपपत्तेः भवतु वा तथापि पूर्व्वोक्तहेतुना स्वाम्यं लभेतेतिविध्यनुपपत्तेः पिण्डापेक्षमेव वर्णनं युक्तं अतएव सर्व्वत्रान्यधनएव अन्यस्वत्वसम्बन्धज्ञापनं मुनयः कुर्व्वन्ति यथा पितृधने पुत्राणां अपुत्रधने पत्न्यादीनामित्यादि न पुनः स्वाम्यग्रहणे प्रेरयन्ति। यच्च सम्बन्धिशब्दत्वेन स्वसम्बन्ध्युपस्थापकत्वं यथा मातेति न परमातावगम्यते इत्युक्तं तदप्ययुक्तं अनुपात्तसम्बन्धिविषयत्वात् तस्य नहि डित्यस्य मातरमानयेत्युक्ते प्रयोज्यस्य माता प्रतीयते प्रयोजकस्य वा तद्वदत्रापि तत्पिण्डमिति तत्पदोपात्तत्वात् सम्बन्धिनः कथं पत्न्यपेक्षिता विधानानुपपत्तिश्च पूर्व्वमुक्तैव। तस्मात् कृत्स्नतदंशग्रहणमेव पत्न्या इत्यनुबोधयति। तथा पत्न्यधिकारविपरीतबोधकानि वचनानि यथा

शङ्खलिखितपैठीनसियमाः। अपुत्रस्य स्वर्यातस्य भ्रातृगामि द्रव्यं तदभावे पितरौ हरेतां पत्नी वा ज्येष्ठा सगोत्रशिष्यसब्रह्मचारिणः अत्र भ्रातृरभावे पित्रोस्तयोरभावे पत्न्यधिकारइति विरोधः। तथा देवलः। ततोदायमपुत्रस्य विभजेयुः सहोदराः। तुल्या दुहितरोवापि ध्रियमाणः पितापि वा सवर्णा भ्रातरो माता भार्य्या चेति यथाक्रमं एषामभावे गृह्णीयुः कुल्यानां सहवासिनः। अत्र सर्व्वादौ भ्रातुरधिकारः सर्व्वशेषे च भार्य्यायाइति विरोधः। अत्र केचिदविभक्तसंसृष्टगोचरो भ्रात्रधिकारः प्रथमं विभक्तासंसृष्टगोचरस्य पत्न्यधिकारइति समादधति तदसङ्गतमितिवक्ष्यं। यदाह। विभक्ता भ्रातरो ये च सम्प्रीत्यैकत्र संस्थिताः। पुनर्विभागकरणे तेषां ज्यैष्ठं न विद्यते। यदा कश्चित् प्रमीयेत प्रव्रजेद्वा कथञ्चन। न लुप्यते तस्य भागः सोदरस्य विधीयते। या तस्य भगिनी सा तु ततोऽंशं लब्धुमर्हति। अनपत्यस्य धर्म्मोयमभार्य्यापितृकस्य च। संसृष्टानान्तु यः कश्चिद्विद्याशौर्य्यादिना धनं। प्राप्नोति तस्य दातव्योद्व्यंशः शेषाः समांशिनः। अत्रोपक्रमोपसंहारयोः संसृष्टत्व-कीर्त्तनात् तत्सन्दंशपतितं न लुप्यते तस्य भागः सोदरस्य विधीयते इतिवचनं संसृष्टविषयं वाच्यं अत्र चानपत्यस्य धर्म्मोऽयमभार्य्यापितृकस्यचेति पुत्रदुहितृ पत्नीपितॄणामभावे संसृष्टस्य सोदरस्य भ्रातुरधिकारं बोधयतीति कथं तस्य पत्नी-बाधकत्वं। किञ्च न लुप्यतइति अविभक्तत्वे संसृष्टत्वे च भ्रात्रन्तरीयद्रव्यमिश्रीभूतस्य द्रव्यस्य पृथगप्रतीतौ लोपाशङ्कायां न लुप्यतइति वचनमुपपद्यते विभक्तस्यासंसृष्टस्य तु धने विभक्तत्वप्रतीतौ का लोपाशङ्का तस्मात् संसृष्टविषयत्वमेवामीषां वचनानां किञ्च पत्न्यादेः पूर्व्वं भ्रात्रधिकारज्ञापकशङ्खादि वचनानां संसृष्टभ्रातृविषयत्वं वचनाद्वा न्यायाद्वा। तत्र न तावद्वचनात् विशेषवचनाभावात् संसृष्टिनस्तु संसृष्टीत्यादिवचनानान्तु भ्रात्रधिकारावसरे विशेषज्ञापनपरत्वेन भ्रात्रधिकारमात्र-परत्वःनुपपत्तेः अनन्तरोपन्यस्तशङ्खस्मृतिवचनानां च संसृष्टविषयत्वे पुत्रदुहितृपत्नीपितृ-पर्य्यन्ताभावे सोदरभ्रात्रधिकारज्ञापकत्वात् तद्विरुद्धत्वात् असंसृष्टविषयत्वमेव तावद्युक्तं नतु संसृष्टविषयत्वं। अथ न्यायादिदमभिधीयते तथाहि संसृष्टत्वे यदेकस्य भ्रातुर्धनं तदपरस्यापि तत्रैकस्य मरणेन स्वत्वनाशेऽपि जीवतस्तत्र स्वामित्वान-पायात् तस्यैव तद्भवति नतु पत्न्याः भर्तृमरणेन पत्नीस्वत्वस्यापि नाशात् यथा सतस्तु पुत्रादिषु न तद्धनंपत्न्याइति तन्मन्दं नहि संसृष्टत्वेऽपि यदेवैकस्य तदेवापर-स्यापि किन्तु अविज्ञातैकदेशं तत् द्वयोः नतु समग्रमेव समग्रस्वत्वकल्पनायां प्रमाणाभावात् वैयुक्तमादावेव। पविभक्तोत्पन्नं भर्त्तृधने पत्न्याः स्वामित्वं भर्त्तृ-मरणात् नश्यतीत्यत्र च प्रमाणाभावात् सति तु पुत्रे तदधिकारज्ञापकादेव पत्नीस्वत्व-

नाशो ऽवगम्यते अत्रापि संसृष्टभ्रात्रधिकारगमकत्वात् तद्विनाशो ऽवगम्यत इति चेन्न संसृष्टभ्रातृगोचरत्वस्यादावप्यसिद्धेः सिद्धे हि भ्रातृसंसृष्टभर्तृमरणेन पत्नीस्वामित्वनाशे भ्रात्रधिकारशास्त्रस्य संसृष्टविषयत्वं सति तु तद्विषयत्वे शास्त्रस्य पत्नीस्वामित्वनाश इतीतरेतराश्रयत्वं । किञ्च शङ्खलिखितादिवचनानामविभक्तसंसृष्टगोचरत्वे अविभक्तस्य संसृष्टस्य च धनं तद्विधभ्रातृगामि तस्य तु तथाविधस्याभावे पितरौ हरेतामित्य-न्वयीवाच्यः तदा च विकल्पनीयं किं विभक्तासंसृष्टौ भ्रातरौ गृह्णीयातां उताविभक्त-संसृष्टौ तत्र न प्रथमः कल्पः पत्नीदुहितरश्चेत्यादिना विभक्तासंसृष्टयोः पित्रोः पत्नीग्राह्यत्वात् कथं पत्नीतः पूर्व्वं तयोरधिकारः नापि द्वितीयः अविभक्तसंसृष्ट-भ्रातृसद्भावेपि अविभक्तसंसृष्टपितृग्राह्यत्वस्य सर्व्वेषामविवादात् । किञ्च यथा पिता भ्राता च विभक्तासंसृष्टधने शरीरदातृतया आत्मा वै जायते पुत्र इत्येकत्व-श्रुत्या धनशरीरयोश्च प्रभुत्वात् तत्पितृदेयपितामहप्रपितामहपिण्डद्वये च सपिण्डनेन मृतस्य भोक्तृत्वात् जीवति च पितरि पुत्राणां पार्व्वणपिण्डदानाभावात् भ्रातुश्च पूर्व्वं पितुरधिकारः तथेतरत्रापि युक्तः अविभागसंसर्गयोर्व्वा अविशेषात् पितृभ्रात्रो-स्तुल्यवदधिकारो युक्तः न तु भ्रातुरभावे पितुरिति युक्तं । किञ्चाविभक्तसंसृष्टौ पितरौ गृह्णीयातामिति द्विवचनमप्यनुपपन्नं माता सह विभागाविभागयोरभावात् अतएव धनसंसर्गाभावोऽपि । यदाह वृहस्पतिः । विभक्तो यः पुनः पित्रा भ्रात्रा चैकत्र संस्थितः । पितृव्येणाथवा प्रीत्या स तु संसृष्ट उच्यते । अनेनैतद्दर्शयति येषामेव हि पितृभ्रातृपितृव्यादीनां पितृपितामहार्जितद्रव्येणाविभक्तत्वमुत्पत्तितः सम्भवति तएव विभक्ताः सन्तः परस्परप्रीत्या यदि पूर्व्वकृतविभागध्वंसेन यत्तवधनं तन्ममधनं यन्ममधनं तत्तवापीतिएकत्र गृहे एकगृहिरूपतया संस्थिताः संसृज्यन्ते न पुनरनेवंरूपाणां द्रव्यसंसर्गमात्रेण सम्भूयकारिणां वणिजामपि संसर्गित्वं नापि विभक्तानां द्रव्यसंसर्गमात्रेण पूर्व्वोक्तप्रीतिपूर्व्वकाभिसन्धानं विना अतःसंसर्गित्वा-विभक्तत्वयोर्माता सहासम्भवात् कथं मातृगतो भ्रातृसन्तानाधिकारविरोधः समाधेयः । सम्प्रति धीमद्भिः समाधीयते । तद्विष्ण्वादिवचनेभ्यः पुत्राद्यभावमात्रेण पत्न्यधिकारः स्पष्टमवगम्यते युक्तं चैतत् यन्मृतधनं पुत्रपौत्रप्रपौत्राणामेव प्रथमं भवति तथाहि मनुविष्णू । पुन्नाम्नो नरकाद्यस्मात् पितरं त्रायते सुतः । तस्मात् पुत्र इति प्रोक्तः स्वयमेव स्वयम्भुवा । तथा हारीतः । पुन्नामा निरयः प्रोक्तश्छिन्नतन्तुश्च नैरयः । तत्र वै त्रायते यस्मात् तस्मात्पुत्र इति श्रुतः । तथा शङ्खलिखितौ । पितृणामनृणी जीवन् दृष्ट्वा पुत्रमुखं पिता । स्वर्गी स तेन जातेन तस्मिन् संन्यस्य तदृणं । अग्निहोत्रं त्रयोवेदा यज्ञाश्च शतदक्षिणाः । ज्येष्ठपुत्रप्रसूतस्य कलां नार्हन्ति षोडशीं ।

तथा मनुशङ्खलिखितविष्णुवसिष्ठहारीता:। पुत्रेण लोकान् जयति पौत्रेणानन्त्यमश्नुते। अथ पुत्रस्य पौत्रेण ब्रध्नस्याप्नोति विष्टपं। तथा याज्ञवल्क्यः। लोकानन्त्यं दिवः प्राप्तिः पुत्रपौत्रप्रपौत्रकैः। तदेवंपुत्रादिभिर्जन्मतःप्रभृति पितुः परलोकोचितमहोपकारनिष्पादनात् मृतस्य तस्य च पार्व्वणविधिना पिण्डदानात् पुत्राद्यर्थं तद्धनं मृतमेवोपकरोतीति न्यायप्राप्तं पुत्रादीनां स्वामित्वं श्रुतं। तथोपकारकत्वेनैव धनसम्बन्धं मनुरप्याह। ज्येष्ठेन जातमात्रेण सुती भवति मानवः। पितृणामनृणश्चैव स तस्मात्सर्व्वमर्हति। तस्मादिति हेतुपञ्चम्याभात् दायभाग प्रकरणे च पुत्रादीनां नानाविधपित्राद्युपकारकत्वकीर्त्तनस्य अनन्यप्रयोजनकत्वात् उपकारकत्वादेव धनसम्बन्धो मनोरनुमतइति गम्यते अतएव पुत्रपदं प्रपौत्रपर्य्यन्तपरं तत्पर्य्यन्तानामेव पार्व्वणविधिना पिण्डदानोपकारकत्वस्याविशेषात् अन्यथा पुत्रपदस्य स्वार्थत्यागानुपपत्तेः पौत्राधिकारज्ञापकं वचनं कथञ्चित् यदि लभ्येतापि प्रपौत्रस्य तु न पृथक् वचनमस्ति तस्मादुपकारकत्वादेव प्रपौत्रस्याप्यधिकारइति पुत्रपदमुपलक्षणं अतएव बौधायनः। प्रपितामहः पितामहः पिता स्वयं सोदर्य्या भ्रातरः सवर्णायाः पुत्रः पौत्रः प्रपौत्रः एतान् अविभक्तदायादान् सपिण्डानाचक्षते विभक्तदायादान् सकुल्यानाचक्षते सत्स्वङ्गजेषु तद्गामी ह्यर्थोभवति सपिण्डाभावे सकुल्यः तदभावे चाचार्य्योऽन्तेवासी ऋत्विग्वाहरेत् तदभावे राजा। अस्यार्थः पित्रादिपिण्डत्रये सपिण्डनेन भोक्तृत्वात् पुत्रादिभिश्च त्रिभिः तत्पिण्डस्यैव दानात् यश्च जीवन् यत्पिण्डदाता स मृतः सन् सपिण्डनात् तत्पिण्डभोक्ता एवञ्च सति मध्यस्थितः पुरुषः पूर्व्वेषां जीवन् पिण्डदाता स मृतः तत्पिण्डभोक्ता च परेषां जीवतां पिण्डसम्प्रदानभूत आसीत् मृतैश्च तैः सह दौहित्रादिदेयपिण्डभोक्ता अतीतेषामयं पिण्डदाता ये चास्य पिण्डदातारः ते अविभक्तपिण्डरूपं दायमदन्तीत्यविभक्तदायादाः सपिण्डाः पञ्चमस्य तु पूर्व्वस्य मध्यमः पञ्चमो न पिण्डदाता नच तत्पिण्डभोक्ता एवमधस्तनोपि पञ्चमो न मध्यमस्य पिण्डदातानापि तत्पिण्डभोक्ता एतेन वृद्धप्रपितामहात् प्रभृतयस्त्रयः पूर्व्वपुरुषाः प्रतिप्रपमनुश्च प्रभृत्यधस्तनास्त्रयः पुरुषाः एकपिण्डभोक्तृत्वाभावात् विभक्तदायादाः सकुल्या इत्याचक्षते। इदञ्च सपिण्डत्वं सकुल्यत्वञ्च दायग्रहणार्थमुक्तं। अतएव मनुनापि। न भ्रातरो न पितरः पुत्रा रिक्थहराः पितुरित्यभिधाय कृतस्त्र्यपेक्षायां त्रयाणामुदकं कार्य्यं त्रिषु पिण्डः प्रवर्त्तते। अशौचाद्यर्थन्तु पिण्डलेपभुजामपि तद्दत्तपिण्डलेपभोक्तृत्वेन सपिण्डत्वं मार्कण्डेयपुराणे निर्द्दिष्टं यथा। पिण्डलेपभुजस्त्वन्ये पितामहपितामहात्। प्रभृत्युक्तास्त्रयस्तेषां यजमानश्च सप्तमः। इत्येवं मुनिभिः प्रोक्तः सम्बन्धः साप्तपौरुषः। अशौचश्च

इत्यर्थः अतएव मनुनाप्युक्तमशौचप्रकरणे। सपिण्डता तु पुरुषे सप्तमे विनिवर्त्तते। समानोदकभावस्तु जन्मनाम्नोरवेदने। अन्यथा अशौचमित्यनेन विरोधः स्यात्।

प्रपौत्रपर्य्यन्ताभावे तु वैधव्यात् प्रभृति व्रतादिना भर्त्तुः परलोकहितावहत्वेन पुत्रादिभ्योऽजघन्येति तेषामभावे धनहारिणी पत्नी। तदाह व्यासः। मृते भर्त्तरि साध्वी स्त्री ब्रह्मचर्य्यव्रते स्थिता। स्नाता प्रतिदिनं दद्यात् स्वभर्त्रे सतिलाञ्जलीन्। कुर्य्याच्चानुदिनं भक्त्या देवतानाञ्च पूजनं। विष्णोराराधनञ्चैव कुर्य्यान्नित्यमुपोषिता। दानानि विप्रमुख्येभ्यो दद्यात् पुण्यविवृद्धये। उपवासांश्च विविधान् कुर्य्यात् शास्त्रोदितान् शुभे। लोकान्तरस्थं भर्त्तारमात्मानञ्च वरानने तारयत्युभयं नारी नित्यं धर्म्मपरायणा। तदेवमादिभिर्व्वचनैः पत्न्या अपि नरकनिस्तारकत्वश्रुतेः धनहीनतया वा अकार्य्यं कुर्व्वती पुण्यापुण्यफलसमत्वेन भर्त्तारमपि पातयतीति तदर्थं तद्धनं पूर्व्वस्वाम्यर्थमेव भवतीति युक्तं पत्न्याः स्वाम्यं।

अतः शङ्खादिवचनेषु व्यवहितयोजना कार्य्या अपुत्रस्य स्वर्य्यातस्य धनं ज्येष्ठा पत्नी हरेत् तदभावे पितरौ हरेतां तदभावे भ्रातृगामीति। तदभावइति मध्यपठितं पूर्व्वेण भ्रातृगामीत्यनेन परेण च पितरौ हरेतामित्यनेन सम्बध्यते अविरोधात् न्यायस्योक्तत्वाच्च नत्वश्रुताविभक्तसंसृष्टगोचरत्वकल्पना अतोऽविशेषेणैव विभक्तत्वाद्यनपेक्षयैव अपुत्रस्य भर्त्तुः कृत्स्नधने पत्न्यधिकारोऽजितेन्द्रियोक्तआदरणीयः।

पत्नीत्वञ्च प्रथमं उत्तमवर्णायाः। ज्येष्ठा पत्नीत्यभिधानात् वर्णक्रमेण ज्येष्ठत्वात् तदाह मनुः। यदि स्वाश्च पराश्चैव विन्देरन् योषितो द्विजाः। तासां वर्णक्रमेणैव ज्येष्ठ्यं पूजा च वेश्म च। अतः परिणयनकनिष्ठापि सवर्णा ज्येष्ठैव तस्या एव यज्ञादिषु व्यापाराधिकारात् पत्नीत्वं। तथाच मनुः। भर्त्तुः शरीरशुश्रूषां धर्म्मकार्य्यञ्च नैत्यिकं। स्वा स्वैव कुर्य्यात् सर्व्वेषां नान्यजातिः कथञ्चन। यस्तु तत् कारयेन्मोहात् स्वजात्या स्थितयान्यया यथा ब्राह्मणचाण्डालः पूर्व्वदृष्टस्तथैव सः। सवर्णायाः पुनरभावे अनन्तरवर्णा पत्नी। यथा विष्णुः। सवर्णाया अभावे त्वनन्तरयैवापदि नत्वेव द्विजः शूद्रया। धर्म्मकार्य्यं कुर्य्यादित्यनुवर्त्तते। तेन ब्राह्मणस्य ब्राह्मणी पत्नी तदभावे क्षत्रियाप्यापदि नतु परिणीते अपि वैश्याशूद्रे। क्षत्रियस्य क्षत्रिया पत्नी तदभावे वैश्यापि अनन्तरवर्णत्वात् न शूद्रा वैश्यस्य वैश्यैवैका। नत्वेव द्विजः शूद्रयेति द्विजमात्रस्यैव शूद्रानिषेधात् अनेनैव पत्नीभावक्रमेण धनाधिकारिता बोद्धव्या। अतः परिणीतास्त्रीणामप्यपत्नीत्वात् तदभिप्रायकमेवनारदवचनं। यथा भ्रातृणामप्रजाः प्रेयात् कश्चित् वै प्रव्रजेद्यदि। विभजेरन् धनं तस्य शेषास्ते स्त्रीधनं विना। भरणञ्चास्य कुर्व्वीरन् स्त्रीणामा-

जीवितक्षयात्। रक्षन्ति शय्यां भर्त्तश्चेदाच्छिन्द्युरितरासु च। तथा तत्रैव। अन्यत्र ब्राह्मणात् किन्तु राजा धर्म्मपरायणः। तत्स्त्रीणां जीवनं दद्यादेष दायविधिः स्मृतः। तदीयस्त्रीणामपत्नीनां वर्त्तनधनदानं पत्नीनां पुनः कृत्स्नधनेऽधिकारितेत्यविरोधः। अतएव बृहस्पतिः। येऽपुत्राः क्षत्रविट्शूद्राः पत्नीभ्रातृविवर्जिताः। तेषां धनं हरेद्राजा सर्व्वस्याधिपतिर्हि सः। पत्न्यभावे राज्ञो धनसम्बन्धं दर्शयति। नारदस्तु। तत्स्त्रीणां जीवनं दद्यादिति वर्त्तनधनं दत्त्वा राज्ञा सर्व्वधनं ग्रहीतव्यमिति यो विरोधः स पत्नीस्त्रियोर्भेदेन समाधेयः अतएव पत्न्यधिकारवचनेषु पत्नीपदानुवृत्तिः वर्त्तनवचनेषु च स्त्रीमात्रादि शब्दप्रयोगः। यदपि देवलवचनं। ततो दायमपुत्रस्य विभजेरन् सहोदराः। तुल्या दुहितरो वापि ध्रियमाणः पितापि वा। सवर्णा भ्रातरो माता भार्य्या चेति यथाक्रमं। एषामभावे गृह्णीयुः कुल्यानां सहवासिनः। तुल्याः सवर्णा दुहितरः। सवर्णा भ्रातरः सापत्ना अभिमताः। सोदरभ्रातॄणां स्वपदोपात्तत्वात् विशेषणानुपपत्तेः। तत्रापि सहोदरादिभार्य्यान्तस्य लिखनक्रमो नाधिकारक्रमार्थः विष्ण्वादिविरोधात् किन्तु विष्ण्वाद्युक्तक्रमेण गृह्णीयुरित्येतदर्थः लिखनक्रमेऽनास्था व्यञ्जनार्थमेव दुहितरोवापि पितापि वेति अपिवाशब्दमुभयत्र प्रयुक्तवान् तस्यान्यत्राप्यनुषज्यते तेन सहोदरा वा दुहितरोवा पिता वेत्यनास्था कीर्त्तनक्रमस्य देवलवचनेन दर्शिता। यच्च बालकेनोक्तं असवर्णाविषयं वा युवत्यभिप्रायं वा अविभक्तसंसृष्टविषयं वा शङ्खादिवचनमिति। तेन व्यवस्थितशास्त्रार्थकथनेनात्मनोबालकत्वमेव प्रकटीकृतं सन्देहादेकतरानुष्ठानानुपपत्तेः। यदप्यनूढावरुद्धाभिप्रायं वर्त्तनवचनं वर्णितं तदपि धर्म्मपत्नीनामनुग्रहार्थमिति द्वयमेव वर्त्तनविधानविषयस्य स्त्रीणां पूर्व्वमेव दर्शितत्वात्। किञ्च सवर्णासवर्णत्वाभ्यां पत्नीकृतविशेषेऽपि पित्रोः भ्रातॄणां चाधिकारे कथं विरोधः समाधेयः। संसर्गासंसर्गाभ्याञ्चेत् सएव विशेषः सर्व्वव्यापी भवतु किं पत्नीगोचरसवर्णादिविशेषपरिकल्पनेन अयमपि विशेषो दूषितो ऽस्माभिः पूर्व्वप्रपञ्चेन। सोदरासोदरकृतश्च विशेषो बृहस्पतिना पराहतः। तदाह। सकुल्यैर्व्विद्यमानैस्तु पितृमातृसनाभिभिः। असुतस्य प्रमीतस्य पत्नी तद्भागहारिणी। सनाभयः सहोदराः। तेषु सत्स्वपि पत्न्या धनसम्बन्धं बोधयति तद्भागशब्दात् कृत्स्नएव भर्त्तृभागो ऽवगम्यते न पुनरस्य देकदेशः। तस्मादस्मद्दर्शितैव व्यवस्था शास्त्रार्थः।

पत्नीच भर्त्तृधनं भुञ्जीतैव परं नतु तस्य दानाधानविक्रयान् कर्त्तुमर्हति। तदाह कात्यायनः। अपुत्रा शयनं भर्त्तुः पालयन्ती गुरौ स्थिता। भुञ्जीतामरणात् क्षान्ता दायादा ऊर्द्ध्वमाप्नुयुः। गुरौ श्वशुरादौ भर्त्तृगृहे स्थिता यावज्जीवं भर्त्तृधनं भुञ्जीत नतु

स्त्रीधनवत् स्वच्छन्दं दानाधमनविक्रयानपि कुर्वीत तस्मात्तु मृतायां पत्न्यभावे ये दुहित्रादयो दायाधिकारिणस्ते गृह्णीयुः न पुनर्ज्ञातयः तेषां दुहित्रादिभ्यो जघन्यत्वात् तद्बाधकत्वानुपपत्तेः पत्नी हि तेषां बाधिका तदधिकारस्य प्रागभावे प्रध्वंसे च बाधकाभावस्याविशेषात् बाधानुपपत्ते. नापि स्त्रीधनाधिकारिणो गृह्णीयुः तेषां स्त्रीधन-विषयत्वात् कात्यायनेनैव च स्त्रीधनाधिकारिणां वचनान्तरैरुक्तत्वात् पुनरुक्तत्वापत्तेश्च । अतः पत्नीदुहितरश्चेत्यादिना ये पूर्व्वपूर्व्वस्याभावे परभूताधिकारिणो निर्दिष्टास्ते यथा पत्न्यधिकारप्रागभावे गृह्णीयुस्तथा जाताधिकारायाः पत्न्या अधिकारप्रध्वंसेऽपि भोगावशिष्टं धनं गृह्णीयुः तदानीं दुहित्रादीनामेवान्यापेक्षया मृतोपकारकत्वात् युक्तोधनाधिकारः ।

तथा दान धर्म्मे । स्त्रीणां स्वपतिदायस्तु उपभोगफलः स्मृतः । नापहारं स्त्रियः कुर्य्युः पतिदायात् कथञ्चन । उपभोगोऽपि न सूक्ष्मवस्त्रपरिधानादिना किन्तु स्वशरीरधारणेन पत्युरुपकारकत्वात् देहधारणोचितोपभोगाभ्यनुज्ञानं एवञ्च भर्त्तुरौर्द्ध्वदैहिकक्रियाद्यर्थं दानादिकमप्यनुमतं अतएव नापहारं स्त्रियः कुर्य्युरित्यपहारवचनं अपहारश्च धन स्वाम्यनुपयोगे भवति अतएव वर्त्तनाशक्तौ आधानमप्यनुमतं तत्राप्यशक्तौ विक्रयणमपि न्यायस्याविशेषात् । भर्त्तुरौर्द्ध्वदैहिक-क्रियार्थं अर्थानुरूपं भर्त्तृपितृव्यादिभ्यो दद्यात् । तदाह वृहस्पतिः । पितृव्य-गुरुदौहित्रान् भर्त्तुः स्वस्रीयमातुलान् । पूजयेत् कव्यपूर्त्ताभ्यां वृद्धानाथातिथीन् स्त्रियः । पितृव्यपदं भर्त्तुः सपिण्डपरं । दौहित्रपदं भर्त्तुर्दुहितृसन्तानपरं । स्वस्रीयपदं भर्त्तुः स्वसृसन्तानपरं । मातुलपदञ्च भर्त्तुर्म्मातृकुलपरं । तदेवमादिभ्यो दद्यात् न पुनरेतेषु सत्स्वेव स्वपितृकुलेभ्यः पितृव्यादिवचनानर्थक्यात् तदनुमत्या तु स्वपितृमातृकुलेभ्योऽपि दद्यात् । तदाह नारदः । मृते भर्त्तर्य्यपुत्रायाः पतिपक्षः प्रभुः स्त्रियाः । विनियोगेऽर्थरक्षासु भरणे च स ईश्वरः । परिक्षीणे पतिकुले निर्म्मनुष्ये निराश्रये । तत्सपिण्डेषु चासत्सु पितृपक्षः प्रभुः स्त्रियाः । विनियोगे दानादौ । पतिपुत्राभावे भर्त्तृकुलपरतन्त्रता तस्याः ।

एवञ्च दुहितुरप्यधिकारे जाते तस्यां मृतायां तदभावोक्ताः पितृधनाधिकारिणो गृह्णीयुः नतु दुहितृधनाधिकारिणः ।

पत्न्या च भर्त्तृधनात् कन्यायै विवाहार्थं तुरीयांशो देयः पुत्राणामेव तद्दानप्रतिपादनात् दण्डापूपायितं पत्न्यादीनां दानमिति पत्न्यधिकारः ।

पत्न्यभावे दुहितुरधिकारः । तत्र मनुनारदौ । यथैवात्मा तथा पुत्रः पुत्रेण दुहिता समा । तस्यामात्मनि जीवन्त्यां कथमन्यो हरेद्धनं । दुहितरं विशिनष्टि नारदः ।

पुत्राभावे च दुहिता तुल्यसन्तानदर्शनात्। पुत्रश्च दुहिता चोभे पितुः सन्तानकारिके। दुहितुरधिकारे सन्तानदर्शनं हेतुतया निगदितं सन्तानश्च पिण्डदोऽभिमतः अपिण्डदस्य अनुपकारकत्वेन अन्यसन्तानादसन्तानाच्चाविशेषात् दौहित्रश्च तत्पिण्डदाता नच तत्पुत्रः नापि दौहित्री तत्पर्य्यन्तेन पिण्डविच्छेदात् अतः पुत्रवती सम्भावितपुत्रा चाधिकारिणी वन्ध्या विधवा दुहितृप्रसूत्यादिना निवर्त्यस्तपुत्रा पुनरनधिकारिण्येवेति दीक्षितमतमादरणीयं। तत्र प्रथमं कन्यैवैका पितृधनहारिणी। यथा पराशरः। अपुत्रस्य मृतस्य कुमारी रिक्थं गृह्णीयात् तदभावे चोढ़ा। ऊढ़ापदं पूर्व्वोक्त विशेषपरं। तथा देवलः कन्याभ्यश्च पितुर्द्रव्यात् देयं वैवाहिकं वसु। अपुत्रिकस्य कन्या स्वा धर्म्मजा पुत्रवद्धरेत्। पुत्रिकापदं पुत्रोपलक्षणं। स्वा सवर्णा। धर्म्मजा औरसी। युक्तञ्चैतत् धनमन्तरेणापरिणीतायाः कन्याया ऋतु दर्शने पित्रादीनां नरकपातश्रुतेः। तदाह विष्णुः। यावन्तु कन्यामृतवः स्पृशन्ति तुल्यैः सकामामपि याच्यमानां। तावन्ति भूतानि हतानि ताभ्यां मातापितृभ्यामितिधर्म्मवादः। तथा पैठीनसिः। यावन्नोद्भिद्येते स्तनौ तावदेव देया अथ ऋतुमती भवति तदा दाता प्रति ग्रहीता च नरकमाप्नोति पितृपितामह प्रपितामहाश्च विष्ठायां जायन्ते तस्मान्नग्निका दातव्या। तस्मात् विवाहोपयुक्तत्वेन पित्रादीनां नरकनिस्तारकत्वात् परिणीतायाश्च पुत्रद्वारेणाप्युपकारकत्वात् तदर्थं धनं स्वाम्यर्थमेव भवतीति पत्न्यभावे न्याय्यं कन्यास्वत्वं। कन्यायास्त्वभावे सम्भावितपुत्रायाः पुत्रवत्याश्चाधिकारः। तदाह वृहस्पतिः। सदृशी सदृशेनोढ़ा भर्त्तृशुश्रूषणे रता। कृताकृता वाऽपुत्रस्य पितुर्धनहरी तु सा। सदृशी पितृसवर्णा। सदृशेनोढ़ेति उत्तमाधमवर्णपरिणीतानिरासार्थं उत्तमाधमपरिणीतादुहितृजातस्य अधमोत्तमवर्णमातामहादिश्राद्धनिषेधात् सवर्णेनोढायान्तु पुत्रद्वारेण पितृपकारकत्वात्। पुत्रिकापुत्रस्य तु पुत्रवदेवोपकारकत्वातिशयेन पुत्रिकायाः पुत्रतुल्यत्वात् पुत्रिकौरसयोः समोधनाधिकारः अपुत्रिकायास्तूढ़ायाः पुत्रादिन्यूनोपकारकस्वपुत्रद्वारेणोपकारकत्वमिति कन्यापर्य्यन्तानामभावएव धनाधिकारिता युक्ता। नच वाच्यं एवन्तर्हि पुत्रवत्याएव प्रथमाधिकारोस्तु तदभावे तु सम्भावितपुत्रायास्त्विति यतस्तस्याः पश्चादुत्पन्नस्य दौहित्रस्यानधिकारापत्तेः नच तदयुक्तं दौहित्रतया द्वयोरप्युपकाराविशेषात्। भर्त्तृशुश्रूषा परत्वेनावैधव्यं प्रदर्शयन् सम्भावितपुत्रतां प्रदर्शयति वेति च पूर्व्ववचनोपात्ता दुहिता परामृश्यते तदेवं सदृशी सदृशेनोढ़ा इत्यादि विशेषणात् न दुहितृमात्रतया पितृधनाधिकारितेति दर्शयति। अन्यथा अन्वादत्वात् सम्भवति पुत्रवद्दुहिता वृथा। तस्याः पितृधनं त्वन्यः कथं

गृह्णीत मानव इत्यनेन दुहित्रधिकारे कथिते सदृशी सदृशेनोढेत्यादिना तस्यैवाभिधानं पुनरुक्तं स्यात् सामान्यप्राप्तेस्तु विशेषकथनमपुनरुक्तमेव। यतएव स्वपुत्रद्वारेण पिण्डदातृतया दुहितुः पितृधनाधिकारः अतएव पुत्रिकाया अपि पितृपरमजातधनसम्बन्धायाः पश्चादन्यात्वेन तद्भर्त्तुर्वा प्रसवासामर्थ्येन विपर्य्यस्तपुत्रायाः मरणं तद्धनं न भर्त्तुः। तथा शङ्खलिखितौ। प्रेतायाः पुत्रिकायास्तु न भर्त्ता द्रव्यमर्हत्यपुत्रायाः। तथा पैठीनसिः। प्रेतायां पुत्रिकायां तु न भर्त्ता द्रव्यमर्हति। अपुत्रायां कुमार्य्यां वा स्वसा ग्राह्यं तदन्यया। ततः कुमार्य्यां स्वसा अन्यया वा सम्भावितपुत्रया स्वसा तद्धनं ग्राह्यं अतःस्वाधिकारे व्याहतिरन्याधिकारस्य। यत्तु मनुवचनं अपुत्रायां मृतायां तु पुत्रिकायां कथञ्चन। धनं तत् पुत्रिकाभर्त्ता हरेतैवाविचारयन्। तदविपर्य्यस्तपुत्राया उत्पन्नमृतपुत्रायाः पुत्रिकाया मरणे वेदितव्यं।

पिण्डदानमेव च द्वयोरेकं निमित्तमनुवदति वृहस्पतिः। यथा पितृधने स्वाम्यं तस्याः सत्स्वपि बन्धुषु। तथैव तत्सुतोपीष्टे मातृमातामहे धने। यथा येन दौहित्रदेयपिण्डेन दुहिता पितृधनाधिकारिणी तथैव तेनैव पिण्डदानेन दुहितृसुतोपि मातामहधने स्वामी सत्स्वपि पित्रादिषु। नच पुत्रिकापुत्राभिप्रायेणेदं वचनं कृताकृतावाऽपुत्रस्य पितुर्धनहरी तु सा एतद्वचनोपात्तकृताऽकृतदुहित्रोरेव तस्याऽइति तत्सुतइति तत्पदेन परामर्शात् प्रत्यासत्त्यतिरेकाद्वा अकृतापरामर्श एव युक्तोनतु तत्परित्यागः। अतएव मनुः। दौहित्रोह्यखिलं रिक्थमपुत्रस्य पितुर्हरेत्। सएव दद्यात् द्वौ पिण्डौ पित्रे मातामहाय च। पौत्रदौहित्रयोर्लोके विशेषो नास्ति धर्म्मतः। तयोर्हि मातापितरौ सम्भूतौ तस्य देहतः। मातामहदेहात् दुहितुः सम्भवं दौहित्रस्य धनाधिकारे हेतुत्वेन निर्द्दिशति नतु पुत्रिकाकरणं इतरथा तदेव निर्द्दिशेत्। ता व्यक्तमाह सएव। अकृता वा कृता वापि यं विन्देत् सदृशात् सुतं। पौत्री मातामहस्तेन दद्यात् पिण्डं हरेत् धनं। अकृताजातस्यापि दौहित्रस्याधिकारमभिदधाति। किञ्च श्रुतिषु दौहित्रपदमपुत्रिकाजातपरं नियतं। यथा वौधायनः। अभ्युपगम्य दुहितरि जातं पुत्रिकापुत्रं अन्यं दौहित्रं। विद्यादित्यनुवर्त्तते। अतएव भोजदेवेनापि कृताकृतदुहित्रधिकारे वृहस्पतिरित्यभिधाय यथा पितृधने स्वाम्यमिति वचनं लिखितं। तथा गोविन्दराजेनापि मनुटीकायां। अपुत्रपौत्रे संसारे दौहित्रा धनमाप्नुयुः। पूर्व्वेषान्तु स्वधाकारे पौत्रदौहित्रकाः समाः। एतद्विष्णुवचनवलेन उदाहृतः प्रागेव दौहित्रस्याधिकारोदर्शितः सचाक्रमं न रोचते सदृशी सदृशेनोढेत्यादिविरोधात्

भिन्नूढायाः प्रागुक्तरूपाया अभावएव सत्स्वपि पित्रादिषु दौहित्रस्याधिकारः तथैवेति दुहितृवद्भावविधानात् तत्सुतोपीत्यप्यर्थतया च निर्द्देशात् दौहित्रस्य जघन्यतावगतेः। अतोदुहितनन्तरं दौहित्रस्याधिकारइति सिद्धं।

सत्स्वपि वन्धुष्वित्यनेन पित्रोरधिकारः पत्न्यभावे न्याय्योऽपि दुहितृ-दौहित्राभ्यां वाधित इति वाधकाभावे पित्रोरधिकारः सूचितः। अतएवानन्तरं वृहस्पतिः। तदभावे भातरस्तु भ्रातृपुत्राः सनाभयः। सकुल्या वान्धवाः शिष्याः श्रोत्रिया धनहारकाः। तच्छब्देन दौहित्रस्य पित्रोश्च सूचितयोः परामर्शः। तेनामीषामभावे भ्रात्रादीनामधिकारः। यत्तु वालकवचनं पत्नीदुहितरश्चैव पितरौ भ्रातरस्तथा इत्यादिनियतक्रमादधस्तनएव दौहित्रस्याधिकारइति तद्वृहस्पतिवचनेन विरोधात् वालवचनमेव वहुवचनान्त-दुहितृपदेनैव कन्योढ़ादौहित्राणां निर्द्दिष्टत्वात् क्रमविरोधाभावात् यथा स्वर्य्यात-स्यापुत्रस्येति पुत्रपदं प्रपौत्रपर्य्यन्तपरं पिण्डदत्वाविशेषात् तथा दौहित्रस्यापि पिण्डदत्वात तत्पर्य्यन्तपरं दुहितृपदं यथा वा पुत्राभावे तु दुहिता तुल्यसन्तान-दर्शनात् इत्यत्र पुत्रपदं पत्नीपर्य्यन्तपरं अन्यथा दुहितरइतिवहुवचनमनर्थकं स्यात् पत्नी तत्सुतइत्यादिवदेकवचनमेव कुर्य्यात् भ्रातरइत्यस्यापि वहुवचनस्यार्थवत्तां वक्ष्यामः। किञ्च पित्रादीनां राजपर्य्यन्तानां क्रमनियमात् राज्ञोऽभावे दौहित्र-स्याधिकारो वाच्यः नच कदाचिद्राज्ञोऽभावोऽस्तीत्यनधिकारएवाभिहितो भवेत्। तस्मात् विश्वरूपजितेन्द्रियभोजदेवगोविन्दराजैर्दुहित्रभावे दौहित्रस्याधिकारो निरूपित आदरणीयः।

यदा च कन्या जाताधिदारा पश्चात् परिणीता सती म्रियते तदा तद्धनं कन्याया अनुत्पन्नाधिकाराया अभावे येषामूढादीनां प्रतिपादितं उत्पन्नाधि-काराया अप्यभावे तेषामेव तद्धनं नतु तद्भर्त्रादीनां भवति तस्य स्त्रीधनविषयत्वात् भुञ्जीतामरणात् क्षान्तेति वचनेन जाताधिकारायाः पत्न्या अभावे अनुत्पन्नाधिकार-पत्न्याभावीक्तानां पूर्व्वधनस्वामिदायग्राहिणां दुहित्रादीनां धनाधिकारस्य दर्शितत्वात् पत्नीतो जघन्यदुहितृदौहित्रयोरधिकारेदण्डापूपन्यायसिद्धोऽयमर्थः। यद्वा पत्नी-त्युपलक्षणं स्त्री मात्राधिकारे अयमर्थोवोद्धव्यइति तात्पर्य्यं। इति दुहितृ-दौहित्रयोरधिकारः।

दौहित्रस्याभावे पितुरधिकारो न मातुः नापि युगपन्मातापित्रोः तदभावे पितृगामि तदभावे मातृगामीति विष्णुवचनविरोधात्। यत्तु मनुवचनं। अनपत्यस्य पुत्रस्य माता दायमवाप्नुयात्। मातर्य्यपि च वृत्तायां पितुर्म्माता

हरेद्धनं। यच्च बृहस्पतिवचनं। भार्य्यासुतविहीनस्य तनयस्य मृतस्य च। माता रिक्थहरी ज्ञेया भ्राता वा तदनुज्ञया। तत् पितृपर्य्यन्ताभावे बोद्धव्यं। न्यायागतञ्चैतत् दौहित्रात् परतो मातृतश्च पूर्व्वं पितुरधिकार इति मृतपिण्डमृत-भोग्यान्यपिण्डद्वयदातुर्दौहित्रात् मृतभोग्यान्यपिण्डद्वयदातृतया पितुर्जघन्यत्वात् भ्रात्रादिभ्यस्तु मृतभोग्यान्यपिण्डद्वयदातृतया बीजस्य चैवं योन्याश्च बीजमुत्-कृष्टमुच्यते इति मनुवचनावगतोत्कर्षेण च बलवत्त्वात् पितराविव्यत्र च पितृक्रम एवावगम्यते। तथाहि पितृपदात् प्रातिपदिकात् प्रथमं पितुरवगतिः पश्चात् द्विवचनलब्धैकशेषकल्पनया मातुरवगमात् अतः क्रमज्ञानं क्रमाभिधानव्याप्तं तन्निवर्त्तमानं क्रमज्ञानं निवर्त्तयतीत्यनुमानं तदप्रमाणं व्यापक-निवृत्तेरसिद्धत्वात् विष्णुवचनविरोधाच्च। इति पितुरधिकारः।

पितुरभावे मातुरधिकारः पितुरधिकारानन्तरं तदभावे मातृगामीति विष्णुस्मृतेः। युक्तञ्चैतत् गर्भधारणपोषणात् कृतोपकारतया तन्निष्क्रयस्यावश्यकर्त्तव्यत्वात् पुत्र-भोग्यान्यपिण्डदजननेनाप्युपकारकत्वाच्च भ्रात्रादिभ्यः पूर्व्वमधिकारस्य न्याय्यत्वात् अतः पितृतोगौरवातिरेक श्रुतेः मातुरधिकारः पितृतः पूर्व्वमिति हेयं गौरवातिरेकस्य धनसम्बन्धहेतुत्वे उत्पादकब्रह्मदात्रोर्गरीयान् ब्रह्मदः पितेति पितृतः पूर्व्वमाचार्य्य-स्याधिकारापत्तेः कनिष्ठे च भ्रातरि भ्रातृसुते वा सत्यपि पितृव्यादीनामधिकारा-पत्तेश्च अतः पितृतः परतएव मातुरधिकारइति।

एवञ्च मृतस्य पितृसन्तानात् पूर्व्वं पितुश्च परतो मातुरधिकार इति वदता पितामहसन्तानात् पूर्व्वं पितामहाच्च परतः पितामह्या धनाधिकारः सूचितः। अन्यथा पितरौ भ्रातरस्तथेतिक्रमविरोधः स्यात्। अतएव मनुः। मातर्य्यपि च वृत्तायां पितुर्म्माता हरेद्धनं। ससन्तानायां वृत्तायामित्यर्थः अपिशब्दचकारयोरुभयत्रान्वयः कार्य्यः तेन मातरि च वृत्तायां पितामह्यपि गृह्णीयात् किं पुनर्भ्रात्रादयः पितामहपर्य्यन्ताइति अपिशब्दसूचिताः भ्रात्रादयः। तदयं वचनार्थः दौहित्रान्तात् मृतसन्तानात् परतः स्वसन्तानाच्च पूर्व्वं उक्तक्रमेण पित्रोरधिकारः अतः स्वसन्तानात् पूर्व्वं पितामहपितामह्योरधिकारोऽनेनैव दर्शितः अतएव याज्ञवल्क्येन मातुरधिकारप्रदर्शनेनैव पितृव्यादिभ्यः पूर्व्वं पितामहपितामह्योरधिकारस्याप्युक्तत्वात् न पृथगुक्तः। इति मातुरधिकारः।

मातुरभावे भ्रातुर्धनं मातृगामीत्यभिधाय तदभावे भ्रातृगामीति विष्णु-वचनात् तदिति मातुः परामर्शः पितरौ भ्रातरस्तथेत्यत्रापि पित्रोरभावे भ्रातुरधिकारावगतेः न च भ्रातरस्तथा तत्सुतइति यथाभ्रातरोऽधिकृता स्तथाभ्रातृ-

पुत्रोऽपि मातुरनन्तरमधिकारी स्यादिति वाच्यं भ्रातृगामीत्यभिधाय तदभावे भ्रातृपुत्रगामीति विष्णुविरोधात् तदिति भ्रातुः परामर्शः न्याय्यं चैतत् मृतधनिभोग्यपित्रादित्रयपिण्डदानेन भ्रातुरुपकारकत्वात् तथा तद्देयमातामहादिपिण्डत्रयदानेन तत्स्थानपातात्त्व अनेवंरूपात् भ्रातृपुत्रात् बलवत्त्वात् मातृमूलत्वाच्च भ्रातुरेवंरूपस्य मातृतोजघन्यतेति मातृतः परतएवाधिकारीयुक्तः। किञ्च तथा पदं भ्रात्रैव कुतो न सम्बध्यते तेन यथा पितरौ भ्रातरोऽपि तथेति पित्रोर्भ्रातृणाञ्च तुल्याधिकारः स्यात् तस्मात् विष्णुवचनविरोधेनैवायं पर्य्यनुयोगः परिहर्त्तव्यः सचान्यत्रापि समानः। तथाच मनुः। पिता हरेदपुत्रस्य रिक्थं भ्रातरएव वा। भ्रातरएव हरेयु र्नतु भ्रातृपुत्रोऽधिकारीत्याह। किञ्च जीवत् पितृकस्यापि भ्रातृपुत्रस्य किमधिकारोनेष्यते नचात्रान्योहेतुः जीवत्पितृकस्य पिण्डदत्वाभावेनानुपकारकत्वादित्यतः एवञ्चेन्मृतपितृकस्यापि भ्रातृतुल्योपकारकत्वाभावात् कथं तुल्यवदधिकारिता। अतएव देवलेन ततोदायमपुत्रस्य विभजेरन् सहोदराः। तुल्या दुहितरो वापि ध्रियमाणः पितापि वा। सवर्णा भ्रातरोमाता भार्य्या चेतियथाक्रमं इत्यनेन भार्य्यासवर्णदुहितृपितृमातृसहोदरभ्रातृसापत्नभ्रातृपर्य्यन्ताधिकारिग्रहणतायां भ्रातृपुत्रस्याकीर्त्तनात् सापत्नभ्रातृपर्य्यन्ताभावएव भ्रातृपुत्राणामधिकारः कथितः। यच्च सर्व्वे ते तेन पुत्रेणैतिपुत्रत्वस्मरणं तत्पिण्डदानार्थंभ्रातभावे च धनाधिकारार्थं पूर्व्वोक्तवचनेन विरोधात् अन्यथा भ्रातृतः पूर्व्वमेव कुतो न स्यात्। तस्मात्भ्रातुरेव प्रथममधिकारः तत्रापि प्रथमं सोदरस्यैव यदुक्तं सोदरस्य तु सोदरः भ्रातरस्तथेत्युक्त भ्रातुरधिकारावसरे प्रथमं सोदरोगृह्णीयादित्यर्थः। तस्य त्वभावे सापत्नोभ्राता एकप्रभवत्वेन तस्यापि भ्रातृशब्दार्थत्वात्। तथाच संसृष्टिनस्तु संसृष्टी सोदरस्यतु सोदरः। दद्याच्चापहरेदंशं जातस्य च मृतस्य च। इदमपि याज्ञवल्क्यवचनं सोदरासोदरयोर्भ्रातृशब्दार्थत्वं दर्शयति अन्यथा सोदरमात्रस्य तदर्थत्वे सोदरस्य तु सोदरइति न पुनर्विशेषणीयमिति भ्रातृशब्दादेव सोदरावगतेः तस्मात् पितरौभ्रातरइत्यनेन सोदरासोदरयोरेवाधिकारी दर्शितः सोदरवचनेन तु सोदरस्य प्रथममधिकारः सापत्नस्य च सोदरात् मृतदेयषाट्पौरुषिकपिण्डदातुर्मृतभोग्यमात्रपित्रादिपिण्डत्रयदातृतया जघन्यत्वात् भ्रातृपुत्राच्च मृतभोग्यपिण्डत्रयदातुर्मृतभोग्यपिण्डत्रयदातृतया उपकारकत्वातिरेकेण बलवत्त्वात् मध्यएवाधिकारः श्रीकर विश्वरूपोक्तएवादरणीयः।

तत्र किं संसृष्टिनोप्यसोदरस्य सोदराज्जघन्यत्वं न वेत्यपेक्षायामाह याज्ञवल्क्यः। अन्योदर्य्यस्तु संसृष्टी नान्योदर्य्यो धनं हरेत्। असंसृष्ट्यपि

चाददात् संसृष्टी नान्यमातृजः। अस्यार्थः संसृष्टी पुनरन्योदर्य्यः प्रथमं हरेत् न पुनरन्योदर्य्यमात्रः प्रथमञ्च हरन् सोदरं बाधित्वैव वा तेन सह वेत्यपेक्षायां उत्तरार्द्धं असंसृष्ट्यपि सोदरोगृह्णीयात् सोदरपदमनुवर्त्तते नान्यमातृजएव संसृष्टी गृह्णीयात् संसृष्टपदमेव वा सोदरमभिधत्ते अतएव वृद्धयाज्ञवल्क्यवचनं सोदरोनान्यमातृजइति जितेन्द्रियेण लिखितं तथाच पूर्व्वार्द्धस्य संसृष्टीत्यनुवर्त्तते तेन न केवलमन्योदर्य्यएव संसृष्टो गृह्णीयात् किन्त्वसंसृष्ट्यपि सोदरोगृह्णीयादित्यर्थः तेनासंसृष्टिनासोदरेण संसृष्टिना चासोदरेण विभज्य ग्रहीतव्यं अतएवापिशब्दं प्रयुक्तवान्। यत्तु श्रीकरमिश्रैरुक्तं संसृष्टिनस्तु संसृष्टीत्यस्य असोदरसंसृष्टिमात्रविषयत्वे अन्यानपेक्षत्वात् सोदरस्य तु सोदरइत्यस्यापि असंसृष्टसोदरमात्रविषयत्वे नैरपेक्ष्यात् असोदरे संसृष्टिनि सोदरे चासंसृष्टिनि उभयोः प्राप्तौ यदि द्वयमेव प्रवर्त्तते तदा अन्योन्यसापेक्षमुभयोर्विधायकत्वं भवेत्। न चैकस्य सापेक्षं निरपेक्षञ्च विधायकत्वमुचितं विधिवैषम्यप्रसङ्गात् यथा दर्शितं द्वयोः प्रणयन्तीत्यधिकरणे पर्व्वचतुष्टयविहितायां उत्तरवेदेर्न पर्व्वद्वये प्रतिषेध उपपद्यते तत्र पर्व्वद्वये विकल्पसापेक्षं विधानं पर्व्वद्वये च निरपेक्षमिति उत्तरवेदिविधिवैषम्यापत्तेः। तथाचात्र यत्रैव निरपेक्षविधायकत्वं तत्रैव संसृष्टिनस्तु संसृष्टीत्यस्य सोदरस्य तु सोदरइत्यस्य च प्रवृत्तिः स्यात् तत्रासोदरे संसृष्टिनि सोदरे चासंसृष्टिनि सत्युभयोरप्रवृत्तेस्तद्धनं न कश्चिदपि गृह्णीयादित्यापद्यते तस्मात् संसृष्टिनस्तु संसृष्टीति संसृष्टधने संसृष्टिनः सामान्यतोभागप्राप्तौ तदपवादार्थं सोदरस्य तु सोदर इति वचनं एवञ्च संसृष्टिनोप्यसोदरस्य सोदरे सति न प्राप्तिः किन्तर्हि विभागसंसृष्टस्य असंसृष्टस्य च सोदरस्यैवेत्युक्तं। तदसङ्गतं नहि द्वयोरुभयत्रैकैकत्र प्रवृत्तयोर्युगपदेकत्रप्रवृत्तिमात्रेण विधिवैरूप्यं केवलोद्गातृप्रतिहर्त्तृपच्छेदेन निरपेक्षप्रवृत्तयोः सर्व्वस्वदाक्षिण्यादाक्षिण्यशास्त्रयोर्युगपदुभयापच्छेदेसति नैकमपि शास्त्रं प्रवर्त्तेत विधिवैरूप्यात्। तथा चातुर्होत्रां पौर्णमासीमभिमृषेत् पञ्चहोत्राममावास्यामितिशास्त्रयोरुपांशुयागाग्नीषोमीययोरैन्द्रदध्यैन्द्रपयसोरेकैकत्र प्रवृत्तयोर्द्वयोरामे‍ष्टौ प्रवृत्तौ विधिवैषम्यापत्तेर्नैकमपि प्रवर्त्तेत। तस्मात् बाधनिरपेक्षं नित्यवद्विधानं क्वचित् क्वचित् विध्यन्तरबाधसापेक्षमिति वैरूप्यलक्षणं। तथाहि उपात्त वपन्तीति वेदिविधिसापेक्षो निषेधः तद्बाधं विना विधिरेव न स्यादिति वेदिविधिबाधसापेक्षं विधानं नच नित्यवदेव तस्य बाधः तथा सति निषेधो विफलः निषेधं विनापि वैयाकरणस्य प्राप्तेः ततश्च वेदिविधिरपि निषेधविधिबाधसापेक्षविधिभावः पर्व्वद्वये पर्व्वद्वयेतु निरपेक्षइति भवति विधिवैषम्यं विकल्पश्च स्यात् रागप्राप्ते तु नित्यवद्बाधः

कादाचित्कस्याकरणस्य निषेधमन्तरेणापि प्राप्तेः अतएव षोडशिग्रहणाग्रहण-
शास्त्रयोर्व्विकल्पः। ये तु ब्रुवते प्राप्तिपूर्व्वकत्वात् निषेधस्य न निमित्तं विधिरपबाधत
इतिन्यायेन विकल्पइति तेषां मते न तौ पश्नौ करोतीत्यादौ रागप्राप्तनिषेधे च
विकल्पः स्यात्। किञ्च एवंनिमित्तनः स्वनिमित्तबाधाक्षमत्वात् कथं पक्षेऽपि बाधः
अतुल्यबलत्वात् अथ निषेधस्यैवायं स्वभावः यत् स्वनिमित्तमुन्मूलयतीति तदा
सर्व्वदैवोन्मूलयेत् प्राप्तेरेव दुर्ब्बलत्वात्। ये तु ब्रुवते यादृच्छिकग्रहणप्राप्तिनिषेधोऽयं
नतु विधितः प्राप्तस्येति तदतीवासङ्गतं वैधग्रहणस्य अवैधग्रहणनिषेधस्य च
युगपदुपसंहारासम्भवात् विकल्पाभावप्रसक्तेः क्रत्वर्थतया च यादृच्छिकग्रहणप्रसक्त्य-
भावात् निषेधोन क्रत्वर्थः स्यात् तस्मादस्मदुक्तन्यायादेव विकल्पः तदस्तु किं विस्तरेण।
यच्च स्वयमेव वर्णितं असोदरे संसृष्टिनि सोदरे चासंसृष्टिनि संसृष्टिनस्तु संसृष्टीत्यनेन
असोदरस्य धनसम्बन्धप्राप्तौ तदपवादार्थं सोदरस्य तु सोदरइति वचनं तदप्ययुक्तं
अस्मिन्नेव विषये सोदरस्य तु सोदरइति सोदरस्य धनसम्बन्धप्रसक्तौ तदपवादार्थं
संसृष्टिवचनस्यापि सम्भवात् विनिगमनाकारणाभावात् यच्च संसृष्टिनस्तु संसृष्टीत्ये-
तद्विवरणार्थत्वेन अन्योदर्य्येइति वचनं व्याख्यातं तदप्यतीवायुक्तं अन्योदर्य्यवचनादेव
विवक्षितार्थलाभात् संसृष्टिनस्त्वित्यस्यानर्थक्यापत्तेः। किञ्च अन्योदर्य्येस्तु संसृष्टी-
त्यस्यायमर्थः अन्योदर्य्येस्तु संसृष्टो यः स नान्योदर्य्यधनं हरेत् किन्त्वसंसृष्ट्यपि
सोदरपदानुषङ्गात् सोदरएव गृह्णीयात् संसृष्टोऽपि नान्यमातृजोगृह्णीयादिति
व्याख्यातं तदपि न पूर्व्वार्द्धं एकस्य अन्योदर्य्यपदस्य पुनरुक्तत्वात् तथोत्तरार्द्धेऽपि
नान्यमातृजइत्यस्यानर्थक्यापत्तेः अपिशब्दस्य चेत्कारार्थेऽवर्णनात्। किञ्च सोदरे
चासंसृष्टिनि असोदरस्य संसृष्टिनोऽपवादार्थं सोदरवचनस्य वर्णितत्वात्
सोदरासोदरयोरसंसृष्टिनोरप्रवृत्तत्वात् तुल्यवदेवाधिकारः स्यात् न वा कस्य चिदपि
स्यात् अथाचापि सोदरवचनमेव प्रवर्त्तते तदैकत्र संसृष्टिवचनबाधसापेक्षं अन्यत्र
तु बाधानपेक्षमिति भवतामेव विधिवैरूप्यं यथा सोमे विधीयमाना वेदिः
दीक्षणीयादिष्वतिदेशप्राप्तवेदिविधिबाधेन अन्यत्र बाधं विनैवेतिवैरूप्यात् अवेदिमतां
तद्दृष्टव्यमित्युक्तं। अस्मन्मते तु श्रीकरसम्मतमपि विधिवैरूप्यं नास्ति संसृष्टि-
सोदरवचनयोरेकैकविषयत्वात् अन्योदर्य्यवचनस्य च सोदरस्यासंसृष्टिनः संसृष्टि-
नश्चासोदरस्य तुल्यवदधिकारज्ञापनार्थत्वात् तथाहि अन्योदर्य्यस्तु संसृष्टी सन्
सत्यपि सोदरे ऽसंसृष्टिनि धनं हरेत् नान्योदर्य्योऽसंसृष्ट्यपि गृह्णीयादिति
पूर्व्वार्द्धस्यार्थः तत्र किं सोदरस्तदानीं न गृह्णीयादित्यपेक्षायां उत्तरार्द्धेनोत्तरं।
असंसृष्ट्यपि चादद्यात् 'सोदरइत्यनुषज्यते संसृष्टोऽन्यमातृजएव न केवलः किन्तू-

भार्य्यां विभज्य ग्रहीतव्यमित्यर्थः अतो विधिवैषम्यमपि परिहृतं। तथा मनुरप्येतदेव दर्शयति। सोदर्य्या विभजेयुस्तं समेत्य सहिताः समं। भ्रातरोये च संसृष्टा भगिन्यश्च सनाभयः। सोदर्य्यामात्राणां सोदर्य्याइति असोदराणाञ्च संसृष्टानां संसृष्टाइतिबहुवचनान्तपदाद्वैतरेतरयोगावगतेः समेत्यसहितारतिपदं उभयसाहित्यार्थमेवयुक्तं अन्यथानर्थक्यात्। अत उभयोरितरेतर योगस्याश्रवणादिति अध्याहृतं। किञ्च ये चेति चकारश्रुतेः चार्थे द्वन्द्वसमासस्यापि श्रवणात् इतरेतरयोगस्याश्रवणाभिधानं इन्द्वस्याप्यतदर्थतामापादयति तस्मात् सोदरासोदरमात्रसद्भावे सोदराणामेव। अतएव बृहन्मनुः। एकोदरे जीवति तु सापत्नो न लभेद्धनं। स्थावरेऽप्येवमेव स्यात् तदभावे लभेत वै। स्थावरेऽप्येवमेवेति विभक्तस्थावराभिप्रायेण यस्मादनन्तरमेवाह यमः। अविभक्तं स्थावरं यत् सर्व्वेषामेव तद्भवेत्। विभक्तं स्थावरं ग्राह्यं नान्योदर्य्यैः कथञ्चन। सर्व्वेषां सोदरासोदराणामित्यर्थः। सोदराणामेव मध्ये एकस्य संसृष्टत्वे तस्यैव असंसृष्टि सोदरासोदरसंसृष्टिसद्भावे च द्वयोरेव सापत्नमात्रसद्भावेऽपि प्रथमं संसृष्टिनः तदभावे चासंसृष्टिनोऽसोदरस्य मृतधनं प्रत्येतव्यं। अतएव उक्तक्रमेण बहूनामधिकारप्रतिपत्त्यर्थं भ्रातरइति बहुवचनमुक्तं अन्यथानर्थकं भवेत्। संसृष्टिनस्तु संसृष्टीत्येतच्च तुल्यरूपसम्बन्धिसमवाये संसर्गकृतविशेषप्रतिपत्त्यर्थं तेन सोदराणां सापत्नानां वा तथा भ्रातृपुत्राणां पितृव्यादीनां वा तुल्यानां सद्भावे संसर्गी गृह्णीयात् वाक्यादविशेषश्रुतेः पूर्व्ववचनेन सर्व्वेषामेव प्रकृतत्वात् सर्व्वेष्वेव चापेक्षा सद्भावात् अतोभ्रातृमात्रविषयं वचनमित्यनादरणीयं। इति भ्रात्रधिकारः।

तदभावे भ्रातृपुत्रस्य भ्रातृगामीत्यभिधाय तदभावे भ्रातृपुत्रगामीतिविष्णुवचनात्। तत्रापि प्रथमं सोदर भ्रातृपुत्रस्य तस्य चाभावेऽसोदरभ्रातृपुत्रस्याधिकारः सोदरस्य तु सोदरइतिवचनात् असोदरभ्रातृपुत्रोहि धनिनोमृतस्य मातरं विहाय स्वपितामहीपितामहीविशिष्टस्य धनिपितुः पिण्डदातेति सोदरभ्रातृपुत्रात्जघन्यस्तदनन्तरं धनमधिकरोति। नच सपत्नीकत्वेन सपत्नीमातुः सपत्नीपितामह्याः सपत्नीप्रपितामह्याश्च श्राद्धेऽनुप्रवेशः मात्रादिशब्दानां स्वजननीपितृजननीपितामहजननीष्वेव मुख्यत्वात् तैरेव च पदैः श्राद्धे अनुप्रवेशात्। यथा स्वेन भर्त्रा सह श्राद्धं माता भुङ्क्ते स्वधामयं। पितामही च स्वेनैव स्वेनैव प्रपितामही। सपत्नीमात्रादीनाञ्च पार्व्वणश्राद्धानुप्रवेशोनिषिद्धएव यथा पठन्ति। अपुत्रा ये मृताः केचित् स्त्रियो वा पुरुषाश्च ये। तेषामपि च देयं स्यादेकोद्दिष्टं न पार्व्वणं। किञ्च सपत्नीकस्य श्राद्धविधानस्य नित्यत्वं सर्व्वजनसिद्धत्वात् सपत्नीमात्रादीनाञ्चानित्यत्वात् नित्या-

निष्कसंयोगविरोधेन मातापित्रपेक्षमेव सपत्नीकश्राद्धविधानं युक्तं। ननु सोदर-भ्रातृपुत्रवत् सोदरपितृव्यस्यापि धनिदेयसपत्नीकपूर्व्वपुरुषत्रयस्य पिण्डदातृत्वात् धनिपितृव्यभ्रातृपुत्रयोः समानोऽधिकारः स्यात्। उच्यते पितृव्योहि धनिनः पितामहप्रपितामहयोः पिण्डदः भ्रातुः पुत्रस्तु धनिनः प्रधानं पितरमेवादाय पुरुषत्रयस्य पिण्ड दातेति सएव बलवानिति पितृव्यात् पूर्व्वमधिक्रियते। अतएव भ्रातृनप्तापि पितृव्यस्य बाधकः मृतधनिकस्य पितुः प्रधानस्यैव पिण्डदातृत्वात् भ्रातुः प्रतिनप्ता तु धनिनः पितृसन्ततिरपि पितृव्येण बाध्यते पञ्चमत्वेन पिण्डदातृत्वा-भावात्। तथा च मनुः। त्रयाणामुदकं कार्य्यं त्रिषु पिण्ड प्रवर्त्तते। चतुर्थः सम्प्रदातैषां पञ्चमो नोपपद्यते इत्यनेन पञ्चमोनिषिद्धः किन्तु पितुरपि प्रपौत्र-पर्य्यन्ताभावे पितृदौहित्रस्याधिकारो बोद्धव्यः धनिदौहित्रस्यैव एवं पितामहप्रपिता-महसन्ततेरपि दौहित्रान्तायाः पिण्डप्रत्यासत्तिक्रमेणाधिकारो बोद्धव्यः दौहित्रोऽपि ह्यमुत्रैनं सन्तारयति पौत्रवदिति हेतोरविशेषात् अतएव मनुना पृथगमीषामधिकारो न दर्शितः त्रयाणामिति अनन्तरइतिवचनद्वयेनैव संगृहीतत्वात्। याज्ञवल्क्येन न पित्रादिदौहित्रस्यापि तद्गोत्रजातस्य पिण्डदानानन्तर्य्यक्रमेणाधिकारप्रतिपत्त्यर्थं गोत्रजपदं कृतं सपिण्डस्त्रीणाञ्च व्युदासार्थं तासामतद्गोत्रजातत्वात् अतएव अर्हन्ति स्त्रीत्यनुवृत्तौ बौधायनः। न दायं निरिन्द्रिया अदायाश्च स्त्रियोमताइति श्रुतेः। न दायमर्हन्ति स्त्रीत्यन्वयः। पत्न्यादीनां त्वधिकारो विशेषवचनादविरुद्धः। प्रपितामहसन्तानस्य दौहित्रान्तस्य मृतभोग्यपिण्डदातुरभावे मृतदेयमातामहादि-पिण्डदानेन पिण्डानन्तर्य्यात् मातुलादिग्रहणार्थं बन्धुपदं प्रयुक्तवान् याज्ञवल्क्यः मनुना तु पिण्डदानानन्तर्य्यवचनेनैव दर्शितं मृतदेयमातामहादिपिण्डत्रयस्यमातु-लादिभिर्दीयमानत्वात् मातुलाद्यर्थत्वं धनस्य धनद्वारेण तस्यापि तत्पिण्डदातृत्वात् धनार्ज्जनस्यहि प्रयोजनद्वयं भोगार्थत्वं दानाद्यदृष्टार्थत्वञ्च तदार्ज्जकस्य तु मृतत्वात् धने भोग्यत्वाभावेनादृष्टार्थत्वमेव शिष्टं। अतएव बृहस्पतिः। समुत्पन्नाद्धनादर्द्धं तदर्थे स्थापयेत् पृथक्। मासषाण्मासिके श्राद्धे वार्षिके च प्रयत्नतः। तथा आपस्तम्बः। अन्तेवासी वार्थान् तदर्थेषु धर्म्मकृत्येषु प्रयोजयेत् दुहिता वा। मासिकादिना तद्भोगार्थं धर्म्मकृत्येष्विति अदृष्टार्थत्वे हेतुः। अतएव दत्तभुक्तफलं धनमिति स्मरन्ति। तस्मात् तद्भोग्यपिण्डदातुरभावे तद्देयपिण्डदातुर्म्मातुलादेर-धिकारो न्याय्यएव अतएव त्रयाणामिति अनन्तर इति वचनद्वयेनैवायमर्थो दर्शित इतिमत्वा तदनन्तरं मनुनोक्तं। अतऊर्द्धं सकुल्यः स्यादाचार्य्यः शिष्यएव वा। सकुल्योवृद्धप्रपितामहादिसन्ततिः समानोदकाश्च भण्यन्ते तेषामुपन्यासक्रमेणाधि-

त्वात्क्रमः। तदभावे आचार्य्य शिष्यादीनां अन्यथा कथं मातुलादीनां मनुविहितो-ऽनन्तरभावः प्रकाश्यते। तस्मात् मनुना पूर्व्ववचनद्वयप्रतिपादितो ऽयमर्थस्तद्विरोधः अतएव दायभागप्रकरणे त्रयाणामुदकं कार्य्यं त्रिषु पिण्डः प्रवर्त्तते। चतुर्थः सम्प्रदातैषां पञ्चमोनोपपद्यतेइत्युक्तः। ऽनन्तरः सपिण्डाद्यस्तस्य तस्य धनं भवेदिति लिखितं पञ्चमस्य सपिण्डसम्बन्धहीनस्य पितृमातृकुलजातं सपिण्डसम्बन्धिसद्भावे अनधिकारार्थं अन्यथा सपिण्डता तु पुरुषे सप्तमे विनिवर्त्तते इति सपिण्डत्वश्रो-तत्वात् अनन्तरः सपिण्डाद्यइत्यनेन आनन्तर्य्यस्य धनग्रहणकारणत्वेनाभिहितत्वात् त्रयाणामिति अनर्थकं स्यात्। नच तेपुर्व्वणिकश्राद्धविधानार्थमिदमिति वाच्यं दायभागसन्दर्भमध्यपाठात् श्राद्धस्य च वचनान्तरविहितत्वात् तथाच मनुः। स्वाध्यायेनार्च्चयेदृषीन् होमैर्द्देवान् यथा विधि। पितॄन् श्राद्धेन नॄनन्नैर्भूतानि बलिकर्म्मणा। नच जननक्रमेणानन्तर्य्यं ग्रहणार्थं वचनं ननु प्रदातृत्वेनानन्तर्य्यार्थमिति वाच्यं जननक्रमस्य वचनादनवगतेः किन्तु उदकवत् त्रिभ्यः पिण्डदानं चतुर्थो ऽधस्तनः पिण्डदाता पञ्चमस्तु पूर्व्वतनो न सम्प्रदानं नाप्यधस्तनः पञ्चमः पिण्ड-दातेत्यभिधाय आनन्तर्य्यमभिदधानो मनुः प्रदातृत्वातिशयेनैवानन्तर्य्यं ज्ञापयति। तस्मात् योयस्तत्कुलोत्पन्नोऽसन्नोतोपि स्वदौहित्रपितृदौहित्रादिरतत्कुलोत्पन्नो वा मातुलादि धनिनोमृतस्य पितृमातृकुलगतत्रपुरुषिकपिण्डदातृतया एकपिण्डसम्बन्धेन सपिण्डः तस्य तस्याप्यधिकारार्थं त्रयाणामितिवचनं आनन्तर्य्येण च विशेषार्थं अनन्तर-इतिवचनं वर्णनीयं तेन मृतभोग्यमृतदेयपित्रादित्रयपिण्डदातृः पितृदौहित्राद्यभावे मृतदेयमातामहादिपिण्डदातॄणां मातुलादीनामानन्तर्य्यक्रमेणाधिकारो बोद्धव्यः।

एतत्पर्य्यन्ताभावे तु सकुल्यः। तदाह मनुः। तदभावे सकुल्यः स्यादाचार्य्यः शिष्यएव वा वा। सकुल्यो विभक्तपिण्डः प्रतिप्रपौत्रः प्रभृति पुरुषत्रयमधस्तनं वृद्धप्रपितामहादिसन्ततिश्च तत्रापि प्रतिप्रपौत्रादेरानन्तर्य्यं पिण्डलेपहारित्वे तेषामुपकारकत्वात् तदभावे च वृद्धप्रपितामहादिसन्ततिः मृतदेय-पिण्डलेपभोगिभ्यो वृद्धप्रपितामहादिभ्यः पिण्डदातृत्वात् एवंविधसकुल्याभावे च समानोदकाः सकुल्यपदेनैव प्राप्ता मन्तव्याः तेषामभावे आचार्य्यः तस्याप्यभावे शिष्यः आचार्य्यः शिष्यएववेति मनुवचनात्। तदभावे सब्रह्मचारी शिष्यः सब्रह्म-चारिणइति निर्द्देशात्। तदभावे चैकगोत्राः तदभावे चैकप्रवराः पिण्डगोत्रर्षि-सम्बन्धा ऋक्थं भजेरन्निति गौतमवचनात्। एतत्पर्य्यन्तानान्तु सर्व्वेषामभावे ब्राह्मणाः तद्धनं गृह्णीयुः। यदाह मनुः। सर्व्वेषामप्यभावे तु ब्राह्मणारिक्थभागिनः। त्रैविद्याः शुचयो दान्ता एवं धर्म्मो न हीयते भोगेन चीयमाणोऽपि धनं सदीयधनस्य

ब्राह्मणगामित्वेनापरधर्म्मप्राप्त्या आपूर्य्यमाणो न क्षीयत इति अत्रापि धनस्य तादर्थ्य-मेव पुरस्करोति। तदभावे ब्राह्मणधनवर्ज्जं राजा गृह्णीयात्। गोत्रविसम्बन्धानां ब्राह्मणानां चाभावः तद्ग्रामि वोद्धव्यः अन्यथा राजाधिकारस्य निर्विषयत्वापत्तेः।

तत्र यदि त्रयाणामित्यादिना पितृदौहित्रमातुलादीनामधिकारो नोक्तः स्यात् तदा सकुल्यादीनां नियतक्रमाणां मध्येऽनुप्रवेशाभावादधिकारएव न स्यात् नच माभूदिति वाच्यं याज्ञवल्क्येन तेषां गोत्रजबन्धुपदाभ्यां दर्शितत्वात् तस्मात् मनुनापि त्रयाणामित्यादिनैव दर्शितमिति वाच्यं। तस्मात् यथा यथा मृतधनस्य तदुपयुक्तत्वं भवति तथा तथा ऽधिकारक्रमोऽनुसरनीयः। अतएव पुत्र पौत्रप्रपौत्राणां तुल्य-वद्देवाधिकारः सिध्यति पुत्रेण लोकान् जयतीत्यादिवाक्येभ्यस्तुल्योपकारश्रुतेः तत्-पिण्डदानाविशेषात् अतएव जीवत्पितृकयोः पौत्रप्रपौत्रयोरनधिकारः सिद्ध्यति। न जीवन्तमतिदद्यादिति श्रुत्या जीवन्तं पितरमतिक्रम्य तयोः पार्व्वणनिषेधादनुप-कारकत्वात् अन्यथा मृतपितृकयोरिव तयोरपिस्यात् जननक्रमेण च सपिण्डा-नन्तर्य्यात् पुत्रस्यैवस्यात् न पौत्रप्रपौत्रयोः। नच पुत्रादीनां त्रयाणां युगपदधि-कारप्रतिपादकं वचनमस्ति तस्मात् उपकारकत्वाविशेषादेव तुल्यवद्धनसम्बन्धो-ऽभिधेयः एवञ्च सर्व्वत्रोक्तरीत्या मृतधनस्य मृतार्थत्वमनुसन्धेयं उक्तक्रमेण। अत्रायमर्थः दायभागप्रकरणे पुत्रादीनामुपकारकत्वातिशयाभिधानस्य अनन्यप्रयो-जनकत्वात् पितृणामनृणत्वेव सन्तस्मात्स्मुमर्हतीत्यानृण्यकरणस्य धनलाभहेतुत्वेन कीर्त्तनात् दौहित्रोपि ह्यमुत्रैनं सन्तारयति पौत्रवदित्यनेनापि सन्तारणस्य धन सम्बन्धहेतुत्वेन निर्द्देशात् पुत्रादीनाञ्च त्रयाणां सन्तारणादन्यस्य तुल्यवद्धन सम्बन्धकारणस्याभावात् त्रयाणामुदकमित्यादेश्चानर्थक्यापत्तेः क्लीवपतितजात्यन्धा-दीनाञ्चानुपकारकत्वादेवानंशित्वाभिधानस्योपपत्तेः प्रतिसम्बन्धिनाञ्चाधिकारार्थं वचन-कल्पना गौरवात् तदर्ज्जितधनस्य च तदुपकारतारतम्येन तादर्थ्यसम्पादनस्य न्याय्यत्वात् उपकारकत्वेनैव धनसम्बन्धोन्यायप्राप्तो मन्वादीनामभिमतइति मन्यतइति निरवद्यविद्याद्योतेन द्योतितोयमर्थो विद्वद्भिरादरणीयः। अथात्रापरितोषो विदुषां वाचनिक एवायमर्थः तथापि यथोक्तएव वचनयोरर्थोयात्रद्वयस्तु किं विस्तरेण।

ब्राह्मणधनवर्ज्जं राजा गृह्णीयात्। तदाह मनुः। अहार्य्यं ब्राह्मणद्रव्यं राज्ञा नित्यमितिस्थितिः। इतरेषान्तुवर्णानां सर्व्वाभावे हरेन्नृपः। सर्व्वशब्देन ब्राह्मण-पर्य्यन्तस्योपादानं।

वानप्रस्थयतिब्रह्मचारिणां धनं धर्म्मभ्रातृसच्छिष्याचार्य्याः गृह्णीयुः तदभावे एकतीर्थी एकाश्रमी गृह्णीयात् तदाह याज्ञवल्क्यः। वानप्रस्थयतिब्रह्मचारिणा-

स्वस्वभागिनः। क्रमेणाचार्य्यं सच्छिष्यधर्म्मभ्रात्रेकतीर्थिनः। प्रतिलोमक्रमेण। यथासम्भवं धनं ज्ञेयं। ब्रह्मचारी च नैष्ठिकोऽभिमतः पित्रादिपरित्यागेन यावज्जीवमाचार्य्यकुलनिवासपरिचर्य्यानिष्ठायाः तेन कृतत्वात् उपकुर्व्वाणस्य तु धनं पित्रादिभिरेव ग्राह्यं। इति अपुत्रधनविभागः।

अथ संसृष्टधनभागः। तत्र मनुर्विष्णु। विभक्ताः सह जीवन्तो विभजेरन् पुनर्यदि। समस्तत्र विभागः स्यात् ज्यैष्ठ्यं तत्र न विद्यते। समस्तत्रेति सवर्ण-भ्रातृसंसर्गाभिप्रायेण ब्राह्मणक्षत्रिययोस्तु संसर्गे पूर्व्ववत् सभागानुसारेणैव भागव्यवस्था बोद्धव्या पूर्व्ववत् ज्येष्ठांशनिषेध मात्रपरं हि समवचनं अतएव वृहस्पतिः। विभक्ता भ्रातरो ये तु सम्प्रीत्यैकत्र संस्थिताः। पुनर्विभागकरणे तेषां ज्यैष्ठ्यं न विद्यते इति ज्येष्ठांशमात्रं निषेधति नतु भागसाम्यमेव बोधयति।

संसर्गिणश्च वृहस्पत्युक्ताः। विभक्तोयः पुनः पित्रा भ्रात्रा चैकत्र संस्थितः। पितृव्येणाथ वा प्रीत्या सतु संसृष्ट उच्यते इतिपरिगणितव्यतिरिक्तेषु संसर्गकृतो विशेषो नादरणीयः परिगणनानर्थक्यात् अपरे च विशेषा भ्रात्रधिकारनिरूपण-प्रकरणोक्ता अनुसन्धेयाः। इतिसंसृष्टविभागः।

अथ विभागकाले निह्नुतस्य पश्चादवगतस्य विभागः तत्र मनुः। ऋणे धने च सर्व्वस्मिन् प्रविभक्ते यथाविधि। पश्चाद्दृश्येत यत् किञ्चित् तत् सर्व्वं समतां नयेत्। पूर्व्वं यथा यस्य विभागकल्पना कृता तत्समानैव कार्य्या न पुनरपहर्त्तुरपहर्त्ततया अल्पभागो दातव्यो न दातव्य एव वेति समतां नयेदित्यस्यार्थः न पुनस्तत्र द्रव्ये सर्व्वेषां समभागार्थं वचनमिदं विंशोद्धारादिबाधकत्वाभावात् ब्राह्मणक्षत्रियादीनाञ्च समभागापत्तेः। तथाच याज्ञवल्क्यः। अन्योन्यापहृतं द्रव्यं विभक्तैर्यत्तु दृश्यते। तत् पुनस्ते समैरंशैर्विभजेरन्निति स्थितिः। तथा कात्यायनः। प्रच्छादितन्तु यद्येन पुनरागत्य तत् समं। भजेरन् भ्रातृभिः सार्द्धमभावेऽपिहि तत्सुताः। अन्योन्यापहृतं द्रव्यं दुर्व्विभक्तञ्च यद्भवेत्। पश्चात् प्राप्तं विभज्यते समभागेन तद्भृगुः। असम्यग्विभक्तस्यापि पुनर्व्विभागं दर्शयति। सकृदंशोनिपततीति तु सम्यग्विभागविषयं। पश्चात् प्राप्तमिति न पुनः पूर्व्व-विभक्तमपि विभजनीयमित्यर्थः। तथा कात्यायनः। बन्धुनापहृतं द्रव्यं बलान्नैव प्रदापयेत्। बन्धूनामविभक्तानां भोगं नैव प्रदापयेत्। सामादिना दाप्यो न बलात् अविभक्तेन तु यदधिकं भुक्तं तदसौ न दाप्यः। अत्र च साधारणधने परधनमप्यस्तीति तन्निह्नवे स्तेन एव भवति किल्विषी चेति ये मन्यन्ते तान् प्रत्युच्यते स एव हि परस्येदमितिविशेषं जानानः परस्वे स्वत्वहेतुमन्तरेणैव स्वत्वमारोपयति

स स्तेन इति लोकप्रसिद्धोऽर्थः नचावेदं परकीयं इदं वा ममेति विवेक्तुं शक्नोति
द्रव्यस्याविभक्तत्वात्। यथा यदैव हि ममेदमिति विशेषं जानानः परस्वत्वापत्तये
स्वामी त्यजति परश्च विशेषेणेदं ममेति स्वत्वं प्रत्येति तदैव दाननिष्पत्तिः नच
साधारणधने तथा सम्भवतीतिसाधारणधनमदेयमुक्तं तथास्तेयमपि नेतन्मम धर्न
परस्येदमिति ज्ञानतएव भवतीति न साधारणधनापहारे स्तेयनिष्पत्तिः। अपहार-
पदन्तु सङ्गोपनाभिप्रायं नहि सङ्गोपनं स्तेयमुक्तं असङ्गुप्तग्रहणेऽपि स्तेयपदप्रयोग-
प्रदर्शनात्। तथा च कात्यायनः। प्रच्छन्नं वा प्रकाशं वा निशायामथवा दिवा।
यत् परद्रव्यहरणं स्तेयं तत् परिकीर्त्तितं। अतएव राज्ञा बलात् न दाप्यइति
पूर्व्वमुक्तं चौरत्वे तु चौरं प्रदाप्यापहृतं घातयेद्विविधैर्व्वधैरितिवचनादास्तां सामादिना
दापनं घातनमपिकार्य्यं एतच्च मुनिभिरपहर्त्तुरपि विभागदानप्रतिपादनादुन्नीयते।
तदुक्तं विश्वरूपेणापि अतः तस्करदोषोनास्तीति वचनारम्भसामर्थ्यात् स्तेयधात्वर्था-
निष्पत्तेरित्यभिप्रायः अतएव प्रायश्चित्तकाण्डे जितेन्द्रियेण भणितं यदि स्वर्णमेव
परकीयं लौहादिबुद्ध्या गृह्णाति असुवर्णं सुवर्णबुद्ध्या आत्मीयमहृत्यं परकीयमेव
आत्मीयबुद्ध्या गृह्णाति सर्व्वत्र नापहारनिष्पत्तिः सर्व्वत्र यथावस्तु परकीयबुद्धेरभावात्
तद्वदत्रापि समानं विभागात्पूर्व्वं तद्गृहैकदेशविशेषगतस्वत्वस्यापरिज्ञानात् अतोनात्र
स्तेयनिष्पत्तिः सत्यपि वा स्तेये ऽपहर्त्तुरपि विभागवचनदर्शनात् न स्तेयदोषः अन्यथा
सुवर्णादिनिह्नवे पतितस्य भागोन स्यात्। अथ पातकहेतुसुवर्णापहारेऽपि स्तेनस्य
भागइति विशेषवचनाभावात् द्रव्यान्तरस्तेयविषयो भागविधिर्व्वर्ण्यते एवन्तर्हि सुवर्णा-
दिस्तेयनिषेध एव किमिति असाधारणपरकीयमात्रद्रव्यगोचरो न व्यवस्थाप्यते
तथापि किं विनिगमना प्रमाणमिति चेत् उच्यते परद्रव्यहरणं स्तेयमिति पर
शब्दात् आत्मीयत्वव्यवच्छेदेनैव परकीयत्वस्यावगमात् साधारणासाधारणयोरसा-
साधारणस्यैव शीघ्र प्रतीतेः। यथेष्टि पूर्व्वकमेवादः पौर्णमासं हविरिति अग्नीषो-
मीयपुरोडाशस्यैवोत्कर्षः नोपांशुयाजीयाज्यस्य अग्नीषोमीयानग्नीषोमीयस्य साधारण-
त्वात् अतएव लोकेऽपिनैवंविधविषये क्वचिद्विनिगमनादिकं दृश्यते। अतोयद्वालक-
वचनं यथा मुद्गापचारे माषप्रतिनिधौ मुद्गानां माषाणाञ्च यज्ञसम्बन्धे अयज्ञिया वै
माषा इति माषा निषिद्धाः तथा आत्मीयानात्मीयहरणेऽपि अनात्मीयापहारो
निषिद्धः। तद्वालकवचनमेव पूर्व्वव्याहृतस्य स्तेयपदार्थस्यैवाभावात् माषगतमुद्गावय-
वोपादानेऽपि माषाणां यज्ञसम्बन्धोनास्तीति न शक्यते वक्तुं माषामिश्रितानामिव
यज्ञसम्बन्धप्रतीतेः। इत्यन्योन्यापहृतविभागः।

अथ हृतविभागसन्देहनिर्णयः। तत्र नारद। विभाग धर्मसन्देहे दायादानां

विनिर्णयः। ज्ञातिभिर्भागलेख्येन पृथक्कार्य्यप्रवर्त्तनात्। ज्ञातीनां कीर्त्तनं तेषु सत्सु नान्य साक्षिग्रहणमित्येतदर्थं। अतएव याज्ञवल्क्यः। विभाग निह्नवे ज्ञातिबन्धुसाक्ष्यभिलेखितैः। विभागभावना ज्ञेया गृहक्षेत्रैश्च यौतकैः। प्रथमं ज्ञातयः सपिण्डाः साक्षिणः। तदभावे बन्धुपदोपनीताः सम्बन्धिनः। तदभावे उदासीना अपि साक्षिणः। तुल्यवद्भावे साक्षिपदेनैवोपात्तत्वात् ज्ञातिबन्धुपदानर्थकतापत्तेः। अतएव शङ्खः। गोत्रभागविभागेऽर्थे सन्देहे समुपस्थिते। गोत्रजैरपरिज्ञाते कुलं साक्षित्वमर्हति। गोत्रजैर्ज्ञातिभिरित्यर्थः तैरज्ञाते कुलं बन्धुः साक्षित्वमर्हति न पुनरसम्बन्धी तेनाप्यपरिज्ञाते अन्यः साक्षीत्यर्थः अतएव मुख्यभूता ज्ञातयएव नारदेन निर्द्दिष्टाः। ज्ञातृभिरिति पाठोऽनाकरः। तथा लिखितेन वा निर्णयः लिखितन्तु साक्षिभ्योबलवदेवेत्युक्तं। तथा पृथक्कार्य्यप्रवर्त्तनादपि निर्णयः। यथोक्तं नारदेन। दानग्रहणपश्वन्नगृहक्षेत्रपरिग्रहाः। विभक्तानां पृथक् ज्ञेयाः पाकधर्म्मागमव्ययाः। साक्षित्वं प्रातिभाव्यञ्च दानं ग्रहणमेव च। विभक्ता भ्रातरः कुर्य्युर्नाविभक्ताः परस्परं येषामेताः क्रिया लोके प्रवर्त्तन्ते स्वरिक्थतः। विभक्तानवगच्छेयुर्लेख्यमप्यन्तरेण तान्। तथा बृहस्पतिः। साक्ष्यं स्थावरं न्यासः प्राग्विभागस्य रिक्थिनां। अनुमानेन विज्ञेयं न स्यातां पत्रसाक्षिणौ। बलानुबन्धव्याघातहीनं साक्ष्यभावकं। स्वस्य भोग स्थावरस्य विभागस्य पृथग्धनं। पृथगायव्ययधनाः कुसीदञ्च परस्परं। वणिक्पथञ्च ये कुर्य्युर्विभक्तास्ते न संशयः। एकोभ्राता ददाति अपरश्च गृह्णाति गृहादिकं आयव्ययस्थितिश्च पृथक् पृथक् एकेन ऋणादिषु क्रियमाणेषु अपरश्च साक्षी प्रतिभूर्वा क्रियते परस्परम्वा ऋणादिक व्यवहारः एकोयत् किञ्चिद्द्रव्यं अन्यतः क्रीत्वा वाणिज्यार्थं भ्रातरि विक्रीणीते एवमादिका एकैकापि क्रिया परस्परं विभक्तानामेव सम्भवति तया विभागानुमानं धीमद्भिरनुसन्धेयमिति। नच येषामेताः क्रिया इत्येतच्छब्देन बह्वीनामुपादानात् मिलितानामेव गमकत्वं वाच्यं न्यायमूलत्वात् वचनानां एकैकस्यापि च तारतम्याविशेषाविशेषात्। न स्यातां पत्रसाक्षिणावित्यनेन पत्रसाक्षिणोरभावेऽनुमानमनुसरणीयमित्युक्तं।

नाचार्य्यगौरवपराहतदायभाग
तत्त्वप्रबोधजनरञ्जनमत्र शक्यं।
किन्तु प्रमाणपरतन्त्रधियां मुनीनां
सम्वादमात्रकृतये कृतिनः प्रयत्नः॥
बहुविधपूर्व्वनिबन्धव्याख्याजज्ञानसंशयस्यैतत्।

जीमूतवाहनकृतं प्रकरणमपनुत्तये ध्येयं ॥

पारिभद्रकुलोद्भूतः श्रीमान् जीमूतवाहनः ।

दायभागं चकारेमं विदुषां संशयच्छिदे ॥

इति पारिभद्रीयमहामहोपाध्याय श्रीजीमूतवाहनकृतौ

धर्म्मरत्ने दायभागः समाप्तः ॥

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SARASWATI VILASHA.

(1503—1524 A.D.)

THE DAYABHAGA OF THE SARASWATI VILASHA.*

1.* The division of heritage is thus ascertained by King Protap Rudra Deva son of the King Purushottama.

Paragraphs 2 to 119 are dealing with character of Daya and partition before and after father's death are omitted as they agree in the main with the Mitakshara.

SHARE OF THE DAUGHTERS.

119. As regards the text of Vishnu : "And so shall unmarried daughters receive shares proportionate to son's share," by the use of the adjective unmarried, it is meant that they get for the purposes of their marriage.

Taking proportionate to son's share means according to means and their taking share is not for maintenance as in the case of mothers, is meant.

120. Therefore it is said by Devala : "to the daughters should be given paternal wealth necessary for marriage," *i.e.*, wealth required for the purposes of marriage.

121. Therefore Yajnavalkya says : "But sisters should be disposed of in marriage by giving them a fourth part for their own share." The meaning is as follows : The brother should get unmarried sisters married. How? By giving them as an allotment, the fourth share from their own share This signifies that after the death of the father daughters are partakers of shares.

122. It is not meant that each brother should give a fourth of his share but a daughter should get one-fourth of the share which a brother of her caste gets.

Paragraphs 123 to 127 speak of brothers and sisters of different castes. They are omitted.

128. (Manu says) : "those that do not give shall be degraded." From this the necessity of giving (a fourth share) appears from the sin attaching to the refusal.

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* I have retained the numbers of paragraphs of the translation by Mr. Foulkes. I have been obliged to make a new translation as I could not get the address of Mr. Foulkes and get his permission to reprint his translation. A new translation may be useful.

129. If some say that the giving of a fourth share is not intended but only the giving of so much of wealth as is necessary for marriage, that is not correct because there is no authority for saying that in the two Smritis the giving of a fourth share (though mentioned) is not intended and because the penalty of sin is prescribed (for refusal).

130. Here if some object that a sister with many brothers becomes very rich and a brother with many sisters becomes poor, it should be observed that by the mode of allotment mentioned before the objection is obviated. It is not said that a sister should get one-fourth of the share (of each brother), which will lead to the objectionable result. Therefore after the death of father, the daughter is entitled to share but before that, she gets only what the father gives her, because there is no special text about it.

131. All the above is the opinion of Asahaya, Medhatithi, Vynanayogee, Pradipikakara and other authors.

132. That opinion however is not respected by Bharuchi, Apararka and others.

133. When the father is dead or when he is alive, the daughter takes no share. While the father should give something at pleasure to the daughters. After father's death, the brothers should give to the unmarried sister wealth necessary for marriage and to the unprovided sister wealth necessary for her provision. She is not entitled to one-fourth share. The texts about giving one-fourth share contemplate only giving wealth necessary for marriage. In the text of Vishnu to the effect that the unmarried and the unprovided should be given a share, it appears only unmarried and unprovided sisters are to be given shares and that appears to be such wealth as is necessary for their marriage or for their provision. As regards the sin declared for not giving a share it is to be understood that by not making provision by giving wealth necessary for such provision and that by not performing the marriage by giving wealth necessary for marriage sin is incurred. As during the life-time of the father something only should be given to daughters, so should it be after his death. Where an obvious meaning can be given, an esoteric meaning should not be given to these Smritis which are all based on reason. The above is the opinion of Bharuchi, Apararka, Yajnapatiya and others. Therefore it is said by Vrihat Vishnu : "The unmarried daughters should be married by incurring expenditure according to one's wealth."*

Paragraphs 134 to 147 are omitted as unimportant and as repeated in the Section on Stridhana.

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* The author gives two sets of opinion but his own opinion is not clear.

PERSONS DISQUALIFIED FOR INHERITANCE.

148. Manu mentions persons disqualified for inheritance: "Eunuchs and outcasts, born blind or deaf, the insane, idiots and the dumb, as well as those deficient in any organ, receive no share."

149. The meaning is that the two persons eunuch and outcast being mentioned by 'disqualified' it is intended that they are to be supported by brothers not disqualified or by the person who takes the wives. By the born blind and deaf being mentioned together, it is meant that these two have shares but though they have shares they are still only entitled to be maintained as they cannot be married. By the use of the word *tatha* it is meant that the lame and the like, if they are qualified to marry, may take shares and are also entitled to be maintained: this is the inner meaning. By the mention of the insane, the idiot and the dumb together, it is meant that they are to be maintained and are not takers of share, *i.e.*, if they are not qualified to marry. 'Those deficient in an organ' applies also to females. Those females deficient in an organ such as step-mother, daughter, sister and males such as brother, his son, paternal uncle and the like and the maternal uncle and the like also should be maintained.

150. Some say that 'deficient in an organ' means those whose organ of sense of smelling and the like has been lost through disease.

151. Narada says: "One hostile to his father or expelled from caste or impotent or excommunicated for grave offence shall not even take a share, if he is a legitimate son, much less so, if he is a Kshetraja." *Abapatita* means turned out by kinsmen for grave offence.

Hostility to father means one who says this is not my father and the like. If otherwise when the father is partial and the sons become disaffected, there would be no shares for them.

152. Vasista says: "But those who have entered a different order receive no share." It means different from the order of householders.

153. Devala says: "When the father is dead, the impotent person, a leper, a mad man, an idiot, a blind man, an outcast, the offspring of an outcast and *lingee* are not entitled to a share of the inheritance." The meaning is that on the death of the father the impotent and the rest are not partakers of share. *Lingee* means a perpetual student living in the forest, a Bauddha or Jaina ascetic or a Shaiva ascetic and the like. By the son of the outcast is meant a son born when the father was outcast. A son born before that not being affected by the fault of the outcast of his father (is

entitled to share) as the relationship of father and son ,is worldly and ceases when one is outcast.

154. Vishnu says so: "And their legitimate sons receive a share. But not the children of an outcast, provided they were born after the act on account of which the parents were outcasted. Neither do children begotten on women of a higher caste receive a share. These sons do not even receive a share of the wealth of the paternal grandfather." Here also the words 'after the death of the father' should be understood. The expletive *api* means that even when the father is not dead, the impotent and the rest are not entitled to shares.

155. So says Apastamba: "He should during his life-time divide his wealth equally amongst his sons, excepting the enunch, the mad man and the outcast." *Parihapya* means excepting. By the word *cha* is included all those that are not qualified to marry.

156. The author of the Chandrika says that the use of the words 'after the death of the father' shows the time of distribution. Therefore only those are disqualified who are afflicted with impotence and the like at the time of partition and not they only who are afflicted with impotence, deafness and the like (from birth).

157. As to what Yajnavalkya says: "but their sons legitimate and Kshetraja .are entitled to shares if free from similar defects," that was applicable in the Dwapara Yuga as the Kshetraja son is prohibited in the present Kali Yuga.

158. Thus the sons of disqualified heirs, if free from disqualification, are entitled to receive the grandpaternal inheritance from the text of Devala: "the sons of such persons being free from similar defect shall obtain their father's share of the heritage." Defect means impotence and the like.

159. Yajnavalkya says: "An impotent person, an outcaste and his issue, one lame, a person afflicted with an incurable disease, as well as others similarly disqualified, should be maintained being excluded from inheritance." *Tajja* means issue of the outcast. The word *Adya* is used to include persons deficient in an organ of sense and the like. The maintenance is for life from the text of Manu that they should be maintained for life.

ON THE EQUAL OWNERSHIP OF FATHER AND SON IN PATERNAL GRANDFATHER'S WEALTH.

Paragraphs 160 to 213 deal with rights of sons of different castes, partible and impartible wealth (including self-acquisition) and shares of grandsons whose fathers are dead. They agree in the main with the Mitakshara and are therefore omitted.

214. On this Yajnavalkya lays down the following special rule: "The ownership of both father and son is the same in land, Nibandha or wealth received from the paternal grandfathers." 'Land' means rice field and the like. Nibanda means right possessed by a minister or other superior officer by grant to receive some portion of every article sold in every shop to be paid to him every month or day for his maintenance. Wealth means gold and silver and the like. What has been acquired by the grandfather by acceptance, purchase and the like, in that the ownership of the father and the son is the same, *i e.*, equal. *He* means because, *i.e.*, because of its being wellknown to all men.

215. From this partition (in such property) cannot be made by the father according to his choice, nor has the father two shares in it.

216. It also appears from this that the text "if the father makes a partition he may make the division among his sons according to his pleasures" applies only to self-acquired property.

217. Likewise the text "the father obtains two shares when dividing" refers only to self-acquired property.

218. The text "when the parents are alive, even if they are aged, the sons are not independent" also refers to property acquired by the father and the mother.

219. To the same effect is the text "they are powerless when the parents are alive."

220. Thus also is the text "while the mother's menstruation has not ceased." Though the father has desire and is unwilling to partition, there can be partition at the will of the sons: It should be known.

221. Likewise, the son, the grandson and the great-grandson has the right to prohibit the undivided father from making a gift or sale of grandpaternal property. But there is no right of prohibition in property acquired by the father, because in that the sons are dependent.

Paragraph 222 is omitted as unimportant.

223. Therefore Manu says: "whatever paternal property the father recovers, he need not divide with the sons, if unwilling, like self-acquired property."

224. Its meaning is: if any property acquired by the grandfather is wrongfully taken by another and is not recovered by him, and the father recovers it, he need not divide it with the sons, it being like self-acquired property, if unwilling. From this it is to be understood that the text shows that the father even if unwilling should partition with the sons, if they desire it, all property acquired by his grandfather.

225. Vrihaspati says: "In property acquired by the grandfather whether movable or immovable, the right to equal share of the father and son is maintained."

226. Vyasa also says: "In ancestral wealth, house and field the father and son are equal sharers.

RIGHTS OF AFTER BORN SON.

Paragraphs 227 to 248 deal with the rights of the after-born son. They agree in the main with the Mitakshara and are omitted excepting paras. 235, 236 and 245.

235. When the father has two or three or many sons, and with some of them he is separate and with some joint, those that are joint on the death of the father alone divide all property acquired by the father.

236. If the father separates from these last (who were joint with him) his property is to be divided by his sons separated before and separated after and does not go to the widow. The text (of Yajnavalkya) "the widow, the daughters, &c.," does not refer to the inheritance of the father but to that of brothers and the like. This will be described later on.

245. The son born after partition gets all the wealth of the father and of the mother.

DESCRIPTION AND DIVISION OF STRIDHANA.

Paras. 249—284 are omitted as they practically only recite the texts on the different kinds of Stridhana and the power of the female and her husband over them. Here also the author does not differ from the Mitakshara. In para. 257, the text of Narada giving to a woman only the right to enjoy for life. Immovable property given to her by the husband is cited with approval.

285. Manu lays down a special rule: "Even to the daughters of those (daughters) something should be given according to merit, out of the estate of the maternal grandmother on the score of affection." 'According to merit,' *i.e.*, with reference to conduct and poverty. *Tasham* means daughters of sisters.

286. When there are brothers and sisters, the daughters of the sisters have no right to the wealth of the grandmother and should therefore be given something.

287. That is true. There is nothing wrong in mentioning that it should be given out of affection. As in the paternal wealth, though the maiden daughters have no right of inheritance, by virtue of the inculpatory text that "those who fail to give shall be outcast," they should be given property

sufficient for marriage and their provision, on the strength of texts only, so also in this case. This is the meaning.

288. Vishnu lays down a special rule: "Mother's Yautaka falls to the share of the unmarried daughter." 'And not to the brothers' is understood.

289. Yautaka means property given to the bride and the bridegroom when being united in marriage. Belonging to the pair being united is the etymological meaning of Yautaka.

290. Gautama however lays down another special rule: "Stridhana belongs to the unmarried and unprovided daughters."

291. The meaning is that the different kinds of Stridhana, beginning with the Saudayika, become the property of the unaffianced, unmarried and unprovided daughters. Therefore those daughters take that wealth according to their shares.

292. This is the explanation of the text according to the opinion of Apararka. It has already been explained in accordance with the opinion of Vijnaneswara.

293. After the death of the wife in default of a daughter, her wealth is taken by the husband.

294. So says Yajnavalkya: "The property of a childless woman belongs to her husband when married in the four forms beginning with the Brahma. If she has children, it goes to the daughters. If she had been married in the remaining forms of marriage it, goes to her father."

295. The meaning is that the aforesaid Saudayika Stridhana of a childless deceased woman, who obtained the status of wifehood being married in the forms Brahma, Daiva, Arsha and Prajapatya, becomes her husband's and in his default it belongs to the nearest Sapindas.

'In the remaining forms' means in the forms Asura, Gandharva, Rakshasha and Paisacha. 'It' means the wealth of the childless woman.

296. "Goes to her father" means goes to both parents as the word *pitarau* is made of the word mother and father (*Ekshesha Dandva*).

297. In that *Ekshesha Dandva*, because of the superiority of the mother, she takes the inheritance first. In the *Ekshesha* word made of Pita and Mata also, the word mother has precedence.

298. In their default, those that are nearest to them take the wealth.

299. In all forms of marriage, 'if she has children,' *i.e.*, if she leaves children, the wealth goes to the daughters,

300. Here by the word daughter's daughters of daughters are indicated, as the daughters have already been mentioned as heirs by the text "daughters take the wealth of their mother remaining after payment of debts."

301. Therefore mother's wealth on her death is taken first by the daughters. When there are married and unmarried daughters, the unmarried take first and in their default thè married daughters take. When there are provided and unprovided married daughters, the unprovided take first.

302. This opinion of Vijnaneswara is not approved by Bharuchi, Apararka and the author of the Chandrika, because Vijnaneswara relies only on his own ingenuity, because it requires many ellipses to be filled and because Gautama's text that Stridhana belongs to daughters unmarried and unprovided, mention these two kinds of daughters equally in general terms without distinction.

303. This rule does not apply to the Sulka. The Sulka belongs to the uterine brothers, because of the text of Gautama: "The Sulka of the sister belongs to the uterine brothers after the death of the mother."

304. After all the daughters, the daughters of the daughters take from the text "if she has borne children, it goes to the daughters."

305. The division among them when born of different mothers is according to their mothers from the text of Gautama: "The right is according to their respective mothers" *Svabhava* here means right. Mother by mother is meant by *Pratimatri*. Their right is according to the right of their respective mothers.

306. The wealth of a woman of inferior caste dying without issue is taken by the daughter of his co-wife of superior caste, in her default, by her issue.

307. So says Manu: Whatever property may have been given by her father to a wife, that the daughter of the Brahmani wife shall take or her issue."

Vijnaneswara says that the use of the word Brahmani indicates superior caste. Therefore the wealth of a childless Vaisya woman may be taken by a Kshatriya daughter.

The estate belongs to daughters, sons and grandsons, because of their connection with the mother's wealth.

309. To that effect says Manu: "When the mother has died, all the uterine brothers and the uterine sisters shall equally divide the mother's estate."

310. The maternal estate all the uterine brothers divide equally and also uterine sisters equally divide. It is not meant that the uterine brothers and sisters together divide

equally, because that is opposed to the text which lays down the order and because of the connection with the act of making the partition and because of the interposition of the conjunctive *Cha*, as in the sentence "Devadatta cooks and also Yajnadatta." The word equally is used to prohibit the preferential share. Uterine is used to exclude step-brother.

311. Therefore Vishnu says: "The sister's Sulka belongs to the mother failing uterine brothers." The meaning is that the Stridhana which is the Sulka of the sister belongs to the mother and failing the mother to the uterine brothers, which means not to the step-brothers.

312. As regards the text of Gautama; "the sisters Sulka belongs to the uterine brothers after the death of the mother" the order is that after the mother's death it belongs to the uterine brothers.

313. So also says Baudhayana: "Stridhana goes to the mother; in her default, it goes to the uterine brother" Stridhana here means the maiden's Sulka.

314. From this, in the matter of the maiden's Sulka, the interpretation of Asahaya that when there are full brothers and half-brothers, the half-brothers also should be given something, is without any support, because in the texts "the sister's Sulka belongs to the uterine brothers after the death of the mother" and the like, the sole right of the uterine brothers is established in all kinds of wealth coming within the definition of the Sulka of the sister.

315. In default of sons, the son's sons take the estate of the grandmother is mentioned by Gautama by an inferential method, inasmuch as those that are entitled to pay the debt are takers of the wealth who must pay the debts, because of the right of the grandsons to pay the debts of the paternal grandmother from the text "the debts should be paid by sons and grandsons."

316. *Is unimportant and is omitted.*

317. In default of the grandson, the order of succession is mentioned by Yajnavalkya thus: "When a woman dies without issue, her estate is taken by the Bandhavas."

318. The meaning is that Stridhana described before, when a woman dies issueless, *i.e.*, without daughter, son and grandson, Bandavas, *i.e.*, heirs beginning with the husband take.

319. As is laid down by Manu: "It is ordained that the proporty (of a woman married) according to the Brahma, the Daiva, the Arsha, Gandharva or the Prajapatya rite (shall belong) to her husband alone, if she dies without issue."

320. As regards the text of Katyayana: "Property given by Bandhus goes to the Bandhus and failing them, to the husband," that refers to the wealth of a woman married according to rites other than the five mentioned above. Otherwise the Sulka would belong to the giver of the Sulka and there would be opposition to the text of Gautama: "the sister's Sulka belongs to the uterine brother after the death of the mother."

321. The givers of the Stridhana called Sulka are the bridegroom and the like.

Even though they are the givers, that wealth does not go to them but goes to the uterine brothers of the owner after the death of her mother.

322. The sister's Sulka is only a pair of cattle in the Arsha marriage. The rule about Sulka does not refer to marriages beginning with the Asura; wealth in that case goes to the giver from the rule about such wealth.

323. As regards the explanation of Bharuchi it should be considered as an assertion of the old.

324. Shankha has righty described the marriage Sulka thus: "The bridegroom (takes) his (own Sulka)" Bridegroom means the person marrying. 'His' means takes his own Sulka; 'when the marriage is not completed' is understood.

325. The completion of marriage means the completion of the fire-oblation which is the principal ceremony at marriage.

326. With the same purpose, Yajnavalkya says: "When she dies, takes back what he has given." The bridegroom takes back the Sulka, or ornaments and the like. The text refers to the case where the affianced girl dies before the marriage ceremony.

327. Brihaspati after enumerating the secondary mothers mentions their heirs. "The mother's sister, the wife of a maternal uncle, a paternal uncle's wife, a father's sister, a mother-in-law and an elder brother's wife are declared to be equal to a mother. If they have no legitimate son of the body, nor (other) son nor daughter's son, nor their son, persons beginning with the sister's son shall inherit their property."

328. Sister's son means the sister's son of the owner of the wealth. He takes the wealth of his own mother's sister. Thus according to the sense of the words beginning with the person first mentioned, persons in order take the estate of females mentioned who are equal to their mothers. Thus the issue of a co-wife take the wealth of their secondary mother on failure of her issue, at her death.

329. In the matter of Stridhana called Adhivedanika or what is received on supersession, Yajnavalkya lays down a

special rule : "to a woman, when her husband marries a second wife, let him give an equal sum for the supersession, provided no separate property have been bestowed on her, but if any have been assigned, let him allot half."

330. She is a superseded woman over whom there is another marriage.

331. The supersession of a woman is Adhivedanam; wealth necessary for it is Adhivedanika. Whatever is spent for the supersession, *i.e.*, in the second marriage, that much should be given to her to whom Stridhana had not been given by the husband or father-in-law. If such Stridhana had been given half of the Adhivedanika property should be given. The meaning is so much should be given as together with property given before would be equal to the wealth spent in the seemed marriage.

332. Therefore the succession of daughters and the like is on account of the nearness of consanguinity and not on account of texts. The relative nearness of consanguinity is thus defined. 'When there is excess of seed of the male there is a male child, when there is excess of the seed of the female, there is born a female child.' This is the rule of Vijnaneswara as has been mentioned before.

Sections 333 to 337, deal with the question whether Stridhana is Daya and sections 338 to 358, refer to the son of a widow by Niyoga. Sections 359 to 365, refer to various kinds of sons. These are omitted as unimportant.

THE ADOPTED AND KRITRIMA SONS.

366. "The Smriti (Manu) says: "That (boy) who is equal, whom his mother or his father affectionately gives with a libation of water in distress must be considered as an adopted (Datrima) son."

367. By the mention of the word distress, it should be understood that the boy should not be given except in distress. This is a prohibition only for the giver.

368. The only son also should not be given from the text of Vasista: "But let him not give or receive an only son."

369. When there are many sons, the eldest should not be given because on account of the text "by the eldest as soon as he is born a man becames one with a son." The eldest is the person primarily entitled to perform the ceremonies to be performed by a son.

370. Vasista thus describes the mode of taking a son: "He who desires to adopt a son, shall assemble his kinsmen, announce his intention to the King, make burnt offering in the middle of the house reciting the Vyahatris and take (as a

son) one who is *Adurabandhava*, i.e., whose kinsmen are not at a distance and *Ashannikrista*, i.e, is not a near relation. By the use of the word *Adurabandhava* the taking of a boy separated by great differences of country and language is prohibited.

By the use of the word *Asannakrista* the taking of an agnate is prohibited.

371. The son purchased is the son sold by the parents or by the mother or the father. As in the case of the adopted son, one of the same caste excepting the only son and the eldest son should be taken.

"The Kritrima is he who makes himself as son." The Kritrima is the boy without father and mother who, being tempted with wealth and lands by the taker, makes himself a son, because when the parents are alive, he is dependent on them.

Sections 372, 374, 375 and 376, which deal with the Svayamdatta and the share of the different kinds of sons.

377. Vasista also says that when there are sons of the preceding kinds, the sons of the succeeding kinds take one fourth share: "If after an adoption has been made a legitimate son is born, the Dattaka son shall obtain a fourth share."

378. The word Dattaka is used to indicate also Krita and the Kritima.

379. So also says Katyayana: "If a legitimate son be born, the rest are takers of a fourth share, provided they are of the same class; if of a different caste, they are entitled to food and raiment only."

"Of the same caste" means those beginning with the Kshetraja and Dattaka. They take a fourth share when there is a legitimate son.

The fourth share signifies the share equal to that of a fourth according to the rule of equality which means one fifth share from the Smriti texts "The sons, Dattaka, Kritrima and others, afterwards take one fifth share." 'Afterwards' means when a legitimate son is born subsequently.

The rest of the Section and Sections 380 to 476 are omitted as unimportant as they refer to different kinds of sons and the discussion of the secular character of property, of which enough has appeared in the preceding commentaries.

SUCCESSION.

477. This ownership being secular, the order of succession of ownership is according to Nyaya or reason and not according to scriptural texts. This is established.

Succession of the widow.

478. That is mentioned by Vijnanayogee. The text "the lawfully wedded wife and daughters" is the rule of order of succession of ownership laid down, for the removal of doubt in case of many claimants, in accordance with reason based on comparative nearness of relationship.

479. It may be said that on the strength of the text "the lawfully wedded wife and the daughters" the widow is entitled to her husband's share and the question arises whether in that case the widow of the undivided husband takes by virtue of the text "the wife is half the body of the husband" and on account of the similarity of reasoning mentioned.

480. That is not so. The rule of reason "the wedded &c.," refers to widows, whose husbands being divided to whom the right accrued in property attaching to an individual separately. The widows of undivided husbands, because the husbands had no separate individual property cannot possibly take their husband's share in joint property. Therefore the rule of reason "the lawfully wedded wife, &c.," is applicable only to separated persons.

481. It is said that if that is so, the widows of undivided brothers, who are all dead, cannot take any share. There is the text of Smriti "the widows of undivided coparceners take their estate." Here 'in default of all the brothers' is understood.

482. Here it is said: the text "the widows of undivided coparceners take their estate" applies even when there are agnates of the husbands, in the absence of brothers and not of all agnates, because the heritage having devolved on an individual person solely, there accrues individual right and even in case of undivided brothers, there is scope for the application of the rule as in the case of divided brothers.

483. The opinion in accordance with Vishnu is that no distinction should be made between a widow with a daughter and one having no daughter.

Sections 484 to 534 embody the oft-repeated questions and answers about widow's right which have been inserted in full in the Mitakshara and the Smriti Chandrika and need not be repeated here.

535. Therefore it is established that by the use of the word Patni in the texts "the Patni and the daughters also" and the like, the lawfully wedded wife takes all the immoveable and the moveable property of a sonless, divided and unreunited deceased person.

Succession of the daughter.

536. The daughters take in default of the wife.

Sections 537 to 540, recite text of Katyayana and Vrihaspati inserted several times in this book need not be repeated.

540. Here when there are both unmarried and married daughters, the unmarried one takes; in her default the married daughter, because of the special rule (of Katyayana) "if she be unmarried."

541. Likewise when there are provided and unprovided daughters, the unprovided daughter takes and in her default, the provided daughter, because the rule of Gautama: "Stridhana belongs to the unmarried and also to the unprovided daughter" is applicable also to the father's estate.

Sections 542 to 561, are only repetitions of texts and discussions of which too much has already been inserted.

Succession of the daughter's son.

562. From the use of the word also (in the text of Yajnavalkya 'the lawfully wedded wife and daughters also) the daughter's son takes the wealth in default of daughters, because of his being impliedly included in it.

563. So says Vishnu: "the daughter's sons take the wealth of a person without son or grandson; the son's son and the daughter's son are equal in respect of performing the Sraddha of the ancestors."

564. Manu also says: "Through that son whom a daughter, either not appointed, or appointed may bear to a husband of equal caste, his maternal grandfather has a son's son; he shall present the funeral cake and take the estate."

Succession of the parents.

565. In his default, the parents, mother and father, take the wealth.

566. Because in the Dvanda compound Pitarau the word mother comes first when the compound word is analysed and because the order according to meaning should be according to the order of the words in the text and because in regard to inheritance the rule appears to be according to the order, mother inherits first for the sake of the order.

567. In her default, the father takes, should be understood.

568. Moreover, the father may be common to sons by different mothers, but the mother can not in the same way be common and thus there is excess of consanguinity.

569. The mother takes first from the text "Always to the relative who is nearest to the (deceased) Sapinda, the estate shall belong."

570. Of the mother and the father the mother's inheriting before the father on account of greater consanguinity is more reasonable. In her default, the father is the heir. This is the opinion of Vijnaneswara.

571. The author of the Chandrika however maintains the preferential right of succession of the father from the text of Vishnu: "on failure of her, to his father; on failure of him to his mother."

572. The opinion of Vijnanayogee is more correct than that of the author of the Chandrika.

573. From this it should be understood that the opinion of Srikara that both parents divide the wealth together is refuted.

Succession of the brother.

574. In default of the father, the brothers are heirs.

575. So says Manu: "The father takes the wealth of the sonless man or the brokers."

576. Dhareswara (King Bhoja) says: "From the text of Manu," mother gets the wealth of her childless son, and when the mother is dead, the mother of the father takes the wealth, "even when the father is alive, the mother being dead, the father's mother takes and not father, because wealth obtained by the father may go to his sons of different caste, but wealth obtained by the grandmother goes only to sons of the some caste. Therefore the grandmother take."

577. This is not approved by Vijnanayogee because the taking of sons of different castes is regulated by the text "they take four, three, two and one shares according to the order of their castes."

578. Among brothers, all uterine brothers take first because the half-brothers are more distant on account of their mother.

579. On failure of uterine brothers, the half-brothers are heirs.

Succession of the brother's son.

580. On failure of brothers, their sons take the wealth according to their fathers (per stirpes) from the text that "determination of shares is according to fathers."

SUCCESSION OF GOTRAJAS.

581. On failure of nephews the heirs are Gotrajas: the paternal grandmother, Sapindas and Samanodakas.

582. Among them the paternal grandmother is the first.

583. Though according to the text of Manu, "on the mother, being dead the father's mother succeeds," the paternal grandmother should succeed after the mother but as there is no room for her in the compact series of heirs beginning with the father and ending with the nephew, the text of Manu is only declaratory of her right of inheritance and the grandmother on account of her superiority takes immediately after "his (brother's) son." This is the opinion of Vijnanayogee.

584. This is not tolerated by the another of the Chandrika. He says: true she has no place in the series of heirs mentioned beginning with the father and ending with the nephew, but the text of Manu 'on the mother being dead the father's mother takes' lays down the order. Again from the text of Vishnu: "the wealth of the sonless man goes to his widow, in her default to the daughter, in her default the parents take, in their default, the father's mother and the Sapindas," after the mother the paternal grandmother succeeds.

585. The opinion of Vijnanayogee is considered to be correct.

586. In default of the paternal grandmother, Sagotra Sapindas, beginning with the grandfather take, Sapindas of different Gotra being included within the term Bandhu.

587. Among them on failure of the grandfather, the descendants, the grandfather, the paternal uncle and his sons succeed in order.

588. On failure of the descendants of the grandfather, the great-grandmother, the great-grandfather, his sons and his grandsons take in order.

589. In this manner Sagotra Sapindas up to the sixth in degree take.

590. In their default the Samanodakas take.

591-593. Omitted as unimportant.

594. As regards what is stated by him (the Sangrahakara) "if there be two kinds of brothers, the uterine and the non-uterine, the uterine take in the presence of the non-uterine" that is to be approved because that is based on knowledge.

SUCCESSION OF BANDHAVAS.

595. The Bandhavas are thus described in another Smriti according to their order of nearness: "The sons of his own father's sister the sons of his own mother's sister, and the sons of his own maternal uncle are known as his own Bandhus; the sons of his father's father's sister, the sons of

his father's mother's sister, and the sons of his fathers maternal uncle are known as his father's Bandhus; the sons of his mother's father's sister, the sons of his mother's mother's sister and the sons of his mother's maternal uncle are known as his mother's Bandhus."

596. They succeed on failure of Gotrajas.

597. Among them, understanding the inner meaning, the order is: first one's own Bandhus take; in their default the father's Bandhavas succeed and in their default the mother's Bandhavas.

598 Here it should not be said that because the mother is preferable to father, her Bandhavas should also be preferred to mother's Bandhavas. The mother is preferred because of the text "in the presence of the father the mother is more venerable than the others" but the preference of the mother's Bandhavas is not mentioned therefore we consider it reasonable that the mother's Bandhavas should succeed after the father's Bundhavas.

Sections 599 to 613 are omitted as dealing with the obsolete rules of succession of disciples, and of the different rules about the wealth of heirless Brahmans and persons of other castes.

SUCCESSION TO THE WEALTH OF A BANAPRASTHA.

614. Having described the rule of succession in blood relationship on account of its superiority over relationship through learning, Yajnavalkya thus describes the rule of succession in relationship through learning: "The heirs to the property of a hermit, of an ascetic and of a student in theology are in order the preceptor, a virtuous pupil and a spiritual brother belonging to the same order."

615. The meaning is that the heirs of the hermit, the ascetic and the student are in inverse order the preceptor, the virtuous pupil and the spiritual brother belonging to the same order.

615. The students in theology are of two kinds: the temporary student and the perpetual student.

617. The wealth of the temporary student is taken by heirs belonging with the mother.

618. The wealth of the perpetual student is taken by the preceptor, as in his case the relationship through learning is superior to the relationship through blood.

619. The wealth of an ascetic is taken by virtuous pupils.

620. Ascetics are of four descriptions, the Kutichaka, the Bahudaka, Hansa and Paramhansa.

621. The wealth of the Kutichaka, the Bahudaka and the Hansa, is taken by the pupil, in default of the preceptor.

622. As the Paramhansa can have no preceptor his wealth is taken by the pupil.

623 The wealth of the Banaprastha is taken by the spiritual brother of the same order.

Ekatirth the means belonging to the same order of life. *Dharmabrata* means accepted as brother, *i.e.*, accepted as brother on account of being pupils of the same preceptor.

624. Vijaneswara mentions the qualification "*Dharmabrata* and also *Ekatirth.*"

625. There is the objection that these persons can have no wealth from the text of Vasista: "those who have entered a different order (from that of the householder) receive no share."

626. But the text "he may make board of things sufficient for a day, a month or six months or for a year and in the month of Asvin he should abandon it" is in reference to the Banaprastha. There is also the text "the lion cloth and clothes he should have, as well as things necessary for the exercise of Yoga and sandals" in reference to Yatis. The perpetual student also must have clothes and the like for the preservation of body. It should be understood that the text about succession to Banaprastha, Yatis and Students refers to wealth of the above descriptions.

Sections 627 to 708 reciting the opinion of Lakshmidhar are omitted.

ON SUCCESSION IN CASE OF REUNION.

710. Vishnu mentions the exception to the rule of succession 'the lawfully wedded wife, the daughters" thus: "the wealth of the reunited does not go the widow.'

711. Bharuchi says on this: "As in jointness, similarly in reunion, ownership belonging jointly to many, on the ownership of one ceasing on his death, the ownership of the rest remains and the question 'who takes his wealth can not arise' and the special rule in reunion is thus an exception to the rule of succession "the lawfully wedded wife and daughters, &c.," because the latter rule is in reference to a condition when such succession is possible."

Sections 712 and 715 dilate on the above and are therefore omitted.

716. There cannot be reunion of with all but it may only be of father, brothers and paternal uncles,

717. So says Vrihaspati. "He who having been divided as again living together with his father or brother or with his uncles even, through affection is said to be reunited with them."

718. Vishnu also says: "Reunion can be only with the paternal uncle, father and brother and not with any other."

719. Bharuchi says: "this rule of reunion is alternative."

720. Its meaning is that reunion with a paternal uncle, father or brother is by the choice of one because of the use of the words 'through affection' in the text 'with his uncles even, through affection.'

721. Therefore this has not been included in the title 'Concerns about partnership' There the rule of succession 'the lawfully wedded wife and daughters, &c," applies. Among partners in business the heirs beginning with the widow take the wealth of the deceased from the text of Vishnu

722. The meaning is this: the texts of Vishnu "there can be reunion only with the paternal uncle, father and brothers and not with others" and "the property of a reunited person does not go to his wife" being an exception to the rule "the lawfully wedded wife and daughters also," the rule of Vishnu is mandatory and there can be reunion with those beginning with the father and not with others; therefore this rule does not apply to partners in business

723. Here Vishnu lays down a special rule, "The offerer of the Pinda takes the estate of the reunited person."

724. On this Bharuchi says: "In the text "of these the offerer of the Pinda and also the taker of the heritage" the right to offer the Pinda in the cause of taking the heritage.

725. The true meaning is this: In the text "of these the offerer of the Pinda and also the taker of the heritage" the order according to sense is superior to the textual order and therefore the taking of the estate is the cause of the right to offer the Pinda. This is in accordance with all the Smritis.

727. Thus in this chapter, the rule on account of jointness and the rule on account of nearness of relationship both apply when proper according to circumstances. Therefore sometimes by the rules of jointness, the reunited only succeed and sometimes on account of consanguinity also the reunited take and sometimes by the rule of consanguinity the unreunited are declared takers of the heritage.

728. Thus in the case of reunion the rule on account of mutual taking of the burden of loss and profit in the adventure, is opposed by the rule of nearness of relationship indicated by the offering of Pinda. The text only shows that

and not that in reality the offering of the Pinda is the cause of taking the wealth.

728. Thus even in those modes it is not laid down that the heirs beginning with the widow take, and thus the conclusion arrived at is established.

729. Therefore the meaning of the text of Vishnu is that that the heritage of one reunited, who has no son, brother or father, goes to his paternal uncle.

730. Therefore Yajnavalka says; "of the reunited man, the reunited."

731. Where, however, there are both uncle and uterine brother the uterine brother takes. So say Yajnavalkya in the text "of the uterine brother the uterine brothers."

732. The heritage of the reunited uterine brother is taken by the uterine brother and the reunited paternal uncle, even though he is joint, does not take because of the brother's right to offer the Pinda. This is the meaning of the text.

733. The son born after the death of a reunited coparcener should be given his share and that should not be taken by the others. So says Yajnavalkya in the text "gives the share of the born and takes the share of the dead."

734. Where again there are half-brothers who are reunited, there being no uterine brothers and there are also reunited paternal uncles, the heritage goes to the half-brothers. So says Yajnavalkya: "A half-brother being reunited may take the heritage" but not a half-brother "not reunited" is understood

735. As says Vishnu: "Amongst non-uterine brothers, the reunited shall take."

Sections 736 to 740 are omitted as unimportant.

741. If so, the heritage of a person separated from his son would go to his reunited brothers and not to his son.

742. That is not correct because the rule of succession in reunion is in the case of the sonless person like the rule "the widow and the daughters also, &c."

743. So says Narada in the chapter on reunion: "If among several brothers one childless should die or become a religious ascetic, &c."

Sections 744 to 746. Recite oft-repeated texts of Devala and Sankha and are omitted.

748. As the son though separated on account of his sonship is superior to the widow and the like, similarly the unreunited son is on account of his sonship is superior to the reunited brother and the heritage goes to the son.

Sections 749 to 762 are omitted as unimportant.

763. Therefore it is proper that the reunited and the unreunited sons should have equal right in fathers heritage.

Section 764. Cites the opinion of Bharuchi which is unimportant.

765. Manu says: "he (the afterborn son) should divide with those that are reunited."

766. The meaning of it is that the after-born son divides the inheritance of the father only with those brothers who having separated from the father had subsequently reunited with him. The after-born son should not divide with the unreunited sons. This is the meaning.

767. As regards the text of Manu: "in the chapter of reunion, If the eldest or the youngest brother is deprived of his share or if either of them dies, his share is not lost. His uterine brothers having assembled together shall equally divide it and those brothers who were reunited with him and uterine sisters."

Section 768. Quotes Mitakshara on the above. It is to be found before and is omitted.

769. The meaning is this. The cause of the non-uterine reunited coparcener taking is his taking the burden of possible loss. The cause of uterine brother's taking is his greater nearness on account of his right to offer Pinda. When there are no uterine reunited coparceners both causes are equally effectual.

The sisters should be given something at the time of partition out of affection but they have no right to share. There can be no reunion with them.and partition is only with the reunited.

From this it is established that the reunited non-uterine brothers and the unreunited uterine brothers take equally.

770. The opinion of the Apararka and the Smriti Chandrika is that the wealth of the reunited sonless man goes first to the brother, and failing him to the father and failing the father, to the virtuous wife according to the order of the text of Sankha which bars the applicability of the rule "the widow, the daughters also" and that therefore the text 'his uterine brothers must divide' lays down the correct order.

771. That is not right. It has been shown before that the order of Sankha can be reconciled to the rule of succession based on reason.

772. The inclusion of the wife in the text of Sankha at the division of the heritage of the reunited, should be considered as meaning, that like the sisters, she should be given something.

773. Therefore the opinion of Bharuchi and Vijnanayogee is correct.

Sections 774 to 784 deal with division of wealth discovered after partiton.

Sections 786 to 788 deal with proof of partition. They are to the same effect as the chapters of the Mitakshara, and the Smriti Chandrika on those subjects and are omitted.

854. Thus ends the topic on partition of heritage in the division dealing with Vyavahara in the book called Smriti Sangraha composed by the Maharaja Protapa Rudra Deva.

सरस्वतीविलासः ।

दायभागः ।

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1. पुरुषोत्तमभूमीन्द्रतनयेन महीभुजा । प्रतापरुद्रदेवेन दायभागो निरूप्यते ।

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दुहितृविभागः ।

119. यत्तु पितुरूर्ध्वमनूढाश्च दुहितरः पुत्रभागानुसारेण भागहारिण्य इति तत्रानूढा इति विशेषणोपादानात्स्वविवाहार्थं पुत्रभागानुसारिभागग्रहणं यथाशक्ति । न पुनर्मातृवदाजीव जीवनार्थसंग्रहत्वमिति मन्यते । 120. अतएव देवलेनोक्तं । कन्याभ्यश्च पितृद्रव्यं देयं वैवाहिकं वसु । विवाहप्रयोजनकधनमित्यर्थः । 121. अतएवाह याज्ञवल्क्यः । भगिन्यश्च निजादंशाद्दत्वांशं तु तुरीयकमिति । अस्यार्थः । भगिन्यश्चासंस्कृताः संस्कर्तव्या भ्रातृभिः । किं कृत्वा निजादंशाच्चतुर्थमंशं दत्वा । अनेन दुहितरोऽपि पितुरूर्ध्वमंशभागिन्य इति गम्यते । 122. तत्र निजादंशादिति प्रत्येकं परिकल्पितादंशादुद्धृत्य चतुर्थोंऽशो दातव्य इत्ययमर्थो न भवति । किन्तु यज्जातीया कन्या तज्जातीयपुत्रभागाच्चतुर्थांशभागिनी सा कर्तव्या ।

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128. पतिताः स्युरदित्सव इत्यदाने प्रत्यवायश्रवणादवश्य दातव्यता प्रतीयते । 129. अत्रापि चतुर्भागवचनमविवक्षितं । संस्कारोपयोगिद्रव्यदानमेव विवक्षितमिति चेत् । न श्रुतिस्वार्थेऽपि चतुर्थांशप्रदानाविवक्षायां प्रमाणाभावात् । अदाने प्रत्यवायश्रवणाच्चेति । 130. यद्यपि कैश्चिदुक्तांशप्रदानविवक्षायां बहुभ्रातृकाया बहुधनत्वं बहुभगिनीकस्य निर्धनता प्राप्नोतीति तदुक्तरीत्या परिहृतमेव । न स्वजातीयाद्भागादुद्धृत्य चतुर्थांशस्य दानमुच्यते । येन तथा स्यात् । तथाहि-

तुल्यं कन्यायंशभागिनीपूर्वं यत्किञ्चित्पिता ददाति तदेव विशेषवचनाभावादिति ।
131. एतच्च सर्वमसहायमेधातिथिविज्ञानयोगिप्रदीपिकाकारादीनां मतमेव ।
132. तन्मतं भावस्पराकंप्रभृतयो न मन्यन्ते । 133. पितुरूर्ध्वं जीवति वा पितरि कन्यांशभागिनो जीवति पितरि पित्रा स्वेच्छया पुत्रिकाणां यत्किञ्चिद्दातव्यं । पितर्युपरते भ्रातृभिरप्यनूढानां संस्कारोपयोगि ऽप्रतिष्ठितानां प्रतिष्ठोपयोगि द्रव्यं दातव्यं । न तु तावच्चतुर्थांशहरा इति । चतुर्थांशप्रतिपादकवचनानि तु संस्कारोपयोगिद्रव्यप्रतिपादनपराणि प्रतिष्ठोपयोगिद्रव्यप्रतिपादनपराणि । अनूढानामप्रतिष्ठितानामेवांशो दातव्य इति विष्णुवचने ऽनूढात्वाप्रतिष्ठितत्वविशेषणविशेषितानामेव भगिनीनामंशदानं प्रतीयते । तत्र प्रतिष्ठोपयोगिविवाहोपयोगि वा प्रतीयते । पतितासुरादिष्वेव स्वत्वदाने प्रत्यवायश्रवणं तु प्रतिष्ठोपयोगिद्रव्यदाने न प्रतिष्ठाया अकरणे संस्कारोपयोगिद्रव्यदानेन संस्काराकरणे प्रत्यवाय इत्यवगन्तव्यं । जीवति पितरि दुहितृणां यत्किञ्चिद्दानं एवमजीवति पितरि यदि दृष्टार्थत्वेसिद्धे ऽदृष्टार्थकल्पना अन्याय्या एतासां श्रुतीनां न्यायमूलत्वादिति भावस्पराकंप्रभृतीनां मतं । अतएव वृद्धविष्णुनोक्तं । अनूढानां च कन्यानां स्ववित्तानुसारेण संस्कारं कुर्यादिति ।

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दायानर्हाः ।

148 मनुरपि दायानर्हानाह । अनंशौ क्लीवपतितौ जात्यन्धबधिरौ तथा । उन्मत्तजडमूकाश्च ये च केचिन्निरिन्द्रियाः । 149. अस्यार्थः । अनंशौ क्लीवपतिताविति द्वित्वोक्त्या दायाहंभ्रातृभिः रिक्थग्राहैर्वा योषिद्ग्राहैर्वा पोष्यौ । जात्यन्धबधिराविति द्वित्वोक्त्या तयोरंशो ऽस्त्येव । किन्त्वंशयुक्तावपि पोष्यौ विवाहसद्भावात् । तथाशब्दप्रयोगेण पंग्वादयः विवाहसंस्कारार्हाश्चेदंशहराः पोष्याश्चेति द्रष्टव्यं । उन्मत्तजडमूकाश्चेति समुच्चयोक्त्या तेऽपि भर्त्तव्या एव नांशहराः । विवाहार्हा न चेदिति शेषः । ये च केचिन्निरिन्द्रिया इति स्त्रीणामप्युपलक्षणं । निरिन्द्रियाणां स्त्रीणां सपत्नीदुहितृभगिनीप्रभृतीनां पुंसां च भ्रातृतत्सुतपितृव्यादीनां मातुलादीनां च संरक्षणं कार्यमिति । 150. केचित्तु निरिन्द्रिया व्याधिना विनष्टघ्राणादीन्द्रिया इत्याहुः । 151. यत्तु नारदेनोक्तं । पितृद्विट् पतितषण्ढो यश्च स्यादवपातितः । औरसा अपि नैतांशं लभेरन् क्षेत्रजाः कुतः । अवपातितो महापराधो बन्धुभिर्बहिष्कृतः । पतितषण्ढो स्पष्टौ । पितृद्वेषी नाम असौ मम पिता नैवेत्थं रूपः । अन्यथा पितुः पक्षपाते पुत्राणां द्वेषसंभवे. तत्र भ्रातृ

निषिद्धत्वात्। 152. वसिष्ठोऽपि। अनंशास्त्वाश्रमान्तरगता इति। गृहस्थाश्रममुपेत्येति शेषः। 153. अतएवाह देवलः। मृते न पितरि क्लीवकुष्ठोन्मत्तजडान्धकाः। पतितः पतितापत्यं लिंगीदायांशभागिनः। मृते पितरि क्लीवादयो दायांशिनो न भवन्तीत्यर्थः। लिंगीनैष्ठिकवनस्थादिः। अपचकपाशुपतादिश्च। पतितापत्यमिति पातित्यदशायामुत्पन्नपुत्रः। तत्पूर्वोत्पन्नपुत्रस्य पितृगतपातित्यदोषानुषंगाभावात्। पितृपुत्रसम्बन्धो लौकिकः पातित्यादौ निवर्तत इति पुरस्तान्निवेदयिष्यते। 154. तथा च विष्णुः। तेषामेवौरसाः पुत्रा भागहारिणो। न तु पतितस्य। पतनीये कृते कर्मण्यनन्तरोत्पन्नाः। प्रतिलोमासु स्त्रीषूत्पन्नाश्चाभागिनस्तत्पुत्राः। पैतामहे ऽप्यर्थ इति। मृते पितरीत्यत्रापिशब्दो ऽध्याहार्यः। पितरि मृते ऽप्यमृते ऽपीति क्लीवादयो नांशहरा इति व्याख्येयं। 155. तथा चापस्तम्बः। जीवन्पुत्रेभ्यो दायं विभजेत्समं क्लीवमुन्मत्तं पतितं च परिहाप्येति। परिहाप्यवर्जयित्वा। चशब्दो विवाहानर्हाणामुपलक्षकः। 156. चंद्रिकाकारस्तु मृते पितरीति विभागकालप्रदर्शनार्थमित्याह। तेन विभागकाले स्थितक्लैव्यादिमतामप्यभागहरत्वं। न पुनः क्लैव्यव्याधियादिमतां लिङ्गामेवेति मन्तव्यमिति। 157. यत्तु याज्ञवल्क्योक्तं। औरसाः क्षेत्रजास्त्वेषां निर्दोषाभागहारिण इति तद्द्वापरादियुगविषयमिति मन्तव्यं। कलौ क्षेत्रजपुत्रनिषेधात्। 158. तथा च निरंशकपुत्राणामंशग्रहणविरोधिव्याध्याद्यभावे पैतामहधनप्राप्तिः। तत्पुत्राः पितृदायांशं लभेरन्दोषवर्जिता इति देवलवचनात्। दोषाः क्लैव्यादयः। 159. अत्र याज्ञवल्क्यः। क्लीबोऽथ पतितस्तज्जः पंगुरुन्मत्तको जडः। अन्धाचिकित्स्यरोगाद्याभर्तव्याःस्युर्निरंशकाः। तज्जः पतितोत्पन्नः। आद्यशब्दो निरिन्द्रियादिसंग्रहार्थः। भरणं यावज्जीवं। यावज्जीवं भर्तव्या इति मनुस्मृतेः।

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पितामहद्रव्ये पितृपुत्रसमस्वाम्यं।

214. अत्र विशेषमाह याज्ञवल्क्यः। भूर्या पितामहोपात्तानिबन्धो द्रव्यमेव वा। तत्र स्यात्सदृशं स्वाम्यं पितुः पुत्रस्य चैव हीति। भूशालिक्षेत्रादिका। निबन्धो नैगमादिपण्यस्थल एकैकस्मिन् पण्ये प्रतिदिनं प्रतिमासं वेयत्पण्यमेतस्य जीवनार्थं दातव्यमिति राजामात्यप्रधानपुरुषाधिकृतो निबन्ध इत्युच्यते। द्रव्यं सुवर्णरजितादि स्वर्णं। यत्पितामहेन प्रतिग्रहक्रयादिना लब्धं तत्र पितुः पुत्रस्य च स्वाम्यं सदृशं समानं। हि यस्मात्। हि यस्माल्लोकप्रसिद्धत्वादित्यर्थः।

215. अत: पितुरिच्छयैव न विभाग:। नापि पितुर्भोगवर्यं। 216. अतश्च। विभागं चेत्पिता कुर्यादिच्छया विभजेत्सुतानित्येतत्स्वार्जितविषयमित्यवगन्तव्यं। 217. तथैव स्वांशौ प्रतिपद्येत विभजन्नात्मन: पितेत्येतदपि स्वार्जितविषयं। 218. जीवतोरस्वतन्त्रस्स्यात्जरयापि समन्वित इत्येतदपि पारतन्त्र्यं मातापितृ-र्जितद्रव्यविषयं। 219. तथैवानीशास्ते हि जीवतोरित्येतदपि। 220. तथा च रजस्कायां मातरीत्येतत्। सस्पृहे च पितरि विभागमनिच्छत्यपि पुत्रेच्छयैव पितामहद्रव्ये विभागो भवतीति ज्ञायते। 221. तथाविभक्तेन पित्रा पैतामहे द्रव्ये दीयमाने विक्रीयमाणे वा पुत्रस्य पौत्रस्य प्रपौत्रस्य निषेधे ऽप्यधिकार:। पित्रर्जिते तु न निषेधाधिकार:। तत्परतन्त्रत्वात्।

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223. अत एवोक्तं मनुना। सपैतृकं पिता द्रव्यमनवाप्तं यदाप्नुयात्। न तत्पुत्रैर्भजेत्सार्धमकामस्स्वयमर्जितमिति। 224. अस्यार्थ:। यत्पितामहा-र्जितं केनाप्यपहृतं पितामहेनानुद्धृतं यदि पितोद्धरति तत्स्वार्जितमिव पुत्रैस्सार्धम-कामो ऽनीहमान: स्वयं न विभजेदिति वदन्। पितामहार्जितमकामो ऽपि पुत्रेच्छया पुत्रैस्सह विभजेदिति दर्शयतीति ज्ञायते। 225. अतएव बृहस्पति:। द्रव्ये पितामहोपात्ते जंगमे स्थावरेऽपि वा। सममंशित्वमाख्यातं पितु: पुत्रस्य चैव हीति। 226. व्यासोऽपि। क्रमायाते गृहक्षेत्रे पुत्रपौत्रास्समांशिन इति।

विभागोत्तरोत्पन्नपुत्रविभाग:।

227. विभागोत्तरकालमुत्पन्नस्य पुत्रस्य विभागकल्पनामाह याज्ञवल्क्य:। विभक्तेषु सुतो जातस्सवर्णायां विभागभाक्।

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235. यत्र पितु: द्वौ वा त्रयो वा बहव: पुत्रा: तत्र कतिभि: पुत्रैर्विभक्त: कतिभिरविभक्त:। अविभक्तानामेव पित्रर्जितं द्रव्यमुपरते पितरि विभाज्यं। 236. पश्चाद्दैतैर्विभक्त: पिता चेतद्द्रव्यं पूर्वं विभक्तानां पश्चाद्विभक्तानां पुत्राणामेव विभाज्यं। न पत्न्या:। पत्नीदुहितर इत्यादिस्वामितासंक्रमक्रमो न पितृविषयो ऽपि तु भ्रात्रादिविषय इति पुरस्तान्निवेदयिष्यते।

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245. विभक्तज: पुत्र: पित्र्यं मातृकं च धनं सर्वं गृह्णीत।

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स्त्रीधनस्वरूपञ्च विभागश्च ।

285. अत्र मनुर्विशेषमाह । यास्तासां स्युर्दुहितरस्तासामपि यथार्हतः । मातामह्या धनात्किंचित्प्रदेयं प्रीतिपूर्वकमिति । यथार्हतः शीलोपयोगदारिद्र्यापेक्षयेत्यर्थः । तासां भगिनीनां दुहितर इत्यर्थः । 286. ननु भगिनीदुहितॄणां भ्रातृभगिनीसद्भावे मातामहीधने स्वामित्वाभावात्किमिति किंचित्प्रदीयत इति । 287. सत्यं । प्रीतिपूर्वकमित्युक्तत्वान्न दोषः । यथा पैतृके धने कन्यानां दायार्हत्वाभावेऽपि वचनबलात्पतिताः स्युरदित्सव इति निन्दाकरणाच्च संस्कारोपयोगिप्रतिष्ठोपयोगिद्रव्यं देयमिति वचनबलात्प्रतीयते तथेहापीत्यर्थः । 288 किंच विशेषमाह । यौतकं मातुः कुमारीभाग एवेति । न सहोदराणामिति शेषः । 289. यौतकमन्योन्यान्वितयोर्वधूवरयोर्देयं । यत्तद्धनं युतयोरिति व्युत्पत्त्या यौतकं । 290. गौतमस्तु विशेषमाह । स्त्रीधनं दुहितॄणामप्रत्तानामप्रतिष्ठितानां चेति । 291. सौदायिकादिस्त्रीधनं कुमारीणामनूढानामप्रतिष्ठितानां च दुहितॄणां स्वं भवतीत्यर्थः । अतश्च तद्धनं ता एव दुहितरो गृह्णीयुर्यथांशमित्यभिप्रायः । 292. इयमपरार्कमतानुसाराद्गौतमवचनव्याख्या । विज्ञानेश्वरमतानुसारेण तु पूर्वमेव व्याख्यातं । 293. भार्याया ऊर्ध्वं कन्याभावे भर्तुर्भार्यारिक्थं भवेत् । 294. तथा च याज्ञवल्क्यः । अप्रजस्त्रीधनं भर्तुर्ब्राह्मादिषु चतुर्ष्वपि । दुहितॄणां प्रसूता चेच्छेषेषु पितृगामि तत् । 295. अस्यार्थः । अप्रजस्त्रियाः पूर्वोक्तायाः ब्राह्मदैवार्षप्राजापत्येषु चतुर्षु विवाहेषु भार्यात्वं प्राप्ताया अतीतायाः पूर्वोक्तं सौदायिकं धनं भर्तुर्भवति । तदभावे तत्प्रत्यासन्नानां सपिण्डानां । शेषेष्वासुरगान्धर्वराक्षसपैशाचेषु विवाहेषु तदप्रजस्त्रीधनं । 296. पितृगामि माता च पिता च पितरौ तौ गच्छतीति पितृगामि । 297. एकशेषनिर्दिष्टाया अपि मातुः प्राधान्यात्प्रथमं धनग्रहणं । पितामात्रेकशेषे मातुरेव प्राधान्यात् । 298. तदभावे तत्प्रत्यासन्नानां धनग्रहणं । 299. सर्वेष्वेव विवाहेषु प्रसूता अपत्यवती चेद्दुहितॄणां तद्धनं भवति । 300. अत्र दुहितृशब्देन दुहितृदुहितर उच्यन्ते । साक्षाद्दुहितॄणां मातुर्दुहितरश्शेषमित्यनेनोक्तत्वात् । 301. अतश्च मातृधनं मातरि वृत्तायां प्रथमं दुहितरो गृह्णन्ति । तत्र चोढानूढा समवाये ऽनूढा गृह्णन्ति । तदभावे परिणीता । तथापि प्रतिष्ठिताप्रतिष्ठिता समवाये ऽप्रतिष्ठिताः । 302. एतद्विज्ञानेश्वरमतं भारुच्यपरार्कचन्द्रिकाकारादयो न मन्यन्ते । विज्ञानेश्वरेण स्वमतिमात्रपरिकल्पितत्वात् । अनेकाध्याहारपरिकल्पनाच्च । गौतमवचने स्त्रीधनं दुहितॄणामप्रत्तानामप्रतिष्ठितानां चेति सामान्येनाभिधानाच्चेति । 303. एतच्च

शुल्कव्यतिरिक्तैव। शुल्कं तु सोदर्याणामेव। भगिनीशुल्कं सोदर्याणामूर्ध्वं मातुरिति गौतमवचनात्। मातुरूर्ध्वमित्यन्वयः। 304. सर्वासां दुहितॄणामभावे दुहितृदुहितरो गृह्णन्ति। दुहितॄणां प्रसूता चेदित्यस्माद्वचनात्। 305. तासां भिन्नमातृकाणां विषमाणां समवाये मातृद्वारेण भागकल्पना। प्रतिमातृस्वभाव इति गौतमस्मरणात्। स्वभावःस्वत्वं। प्रतिमातृ मातरं मातरं। स्वस्य मातृस्वत्वानुसारि तासां स्वत्वमित्यर्थः। 306. अनपत्यहीनजातिस्त्रीधनं तु भिन्नोदराप्युत्तमन्यजातिसपत्नीदुहिता गृह्णाति। तदभावे तदपत्यं। 307. तथा च मनुः। स्त्रियास्तु यद्भवेद्वित्तं पित्रा दत्तं कथञ्चन। ब्राह्मणी तद्धरेत्कन्या तदपत्यस्य वा भवेदिति। 308. ब्राह्मणीग्रहणमुत्तमजात्युपलक्षणमिति विज्ञानेश्वरः। अत एवानपत्यवैश्याधनं क्षत्रिया कन्या गृह्णाति। दुहितॄणां पुत्राणां पौत्राणां च मातृधनसम्बन्धात्। 309. तथा च मनुः। जनन्यां संस्थितायां तु समं सर्वे सहोदराः। भजेरन्मातृकं रिक्थं भगिन्यश्च सनाभय इति। 310. मातृकं रिक्थं सर्वे सहोदराःसमं भजेरन्। सनाभयो भगिन्यश्च समं भजेरन्निति सम्बन्धः। न पुनस्सहोदरा भगिन्यश्च संभूय समं भजेरन्निति संबन्धः। पूर्वोक्तक्रमप्रतिपादकवचनविरोधात्। विभागकर्तृत्वान्वयेनापि च शब्दोपपत्तेश्च। यथा देवदत्तः परन्तु यज्ञदत्तश्चेति। समग्रहणमुद्धारनिवृत्त्यर्थं। सोदरग्रहणं भिन्नोदरनिवृत्त्यर्थं। 311. अतएव विष्णुः। भगिनीशुल्कंमातुःसोदराणामेवेति। अयमर्थः। भगिनीशुल्कात्मकं स्त्रीधनं मातुरेव। मातुरभावे सोदराणामेव। न भिन्नोदराणामित्यर्थः। 312. यत्तु गौतमसूत्रं। भगिनीशुल्कं सोदराणामूर्ध्वं मातुरिति। मातुरूर्ध्वं सोदराणामित्यन्वयपरं। 313. यथाह बोधायनः। स्त्रीधनं मातृगामि। तदभावे सोदरभ्रातृगामीति। स्त्रीधनं कन्याशुल्कं। 314. अतश्च कन्याशुल्कविषये सोदरासोदरविभागे ऽसोदराणामपि किञ्चिद्देयमित्यनङ्गायव्याख्यानमसङ्गतं। भगिनीशुल्कं तु सोदराणामूर्ध्वं मातुरित्यादिस्मृतिषु भगिनीशुल्करूपे सर्वस्मिन्धने सोदराणामेव स्वाम्यप्रतिपादनात्। 315. पुत्राणामभावे पौत्राः पैतामहधनहारिण इति वचोभंग्याह गौतमः। ऋणप्रदातारश्च रिक्थभाज ऋणं प्रतिकुर्युरिति। पुत्रपौत्रै ऋणं देयमिति पौत्राणामपि पितामहर्णापाकरणे ऽधिकारात्।

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317. पौत्राणामप्यभावे तद्विभागक्रममाह याज्ञवल्क्यः। अतीतायामप्रजसि बान्धवास्तदवाप्नुयुः। 318. अस्यार्थः। तत्पूर्वोक्तं स्त्रीधनमप्रजस्यनपत्यायां दुहितृपुत्रपौत्ररहितायां स्त्रियामतीतायां बान्धवा भर्त्रादयो गृह्णन्तीति। 319.

यथाह मनुः। ब्राह्मदैवार्षगान्धर्वप्राजापत्येषु यद्धनं। अतीतायामप्रजसि पत्युरेव तदिष्यत इति। 320. यत्तु कात्यायनेनोक्तं। बन्धुदत्तं तु बन्धूनामभावे भर्तृगामि तत्। तदप्युक्तपञ्चविधेतरविवाहसंस्कृतस्त्रीधनविषयं। अन्यथा शुल्कं शुल्कदातुरेव स्यात्। भगिनीशुल्कं सोदराणामुर्ध्वं मातुरिति गौतमवचनविरोधःस्यात्। 321. शुल्काख्यस्त्रीधनस्य दातारो वरादयः। तेषां दातृत्वे ऽपि तद्धनं न भवति। किन्तु धनस्वामिनां सोदर्यभ्रातॄणां। तेषां तन्मातुरभावे भवतीत्यर्थः। 322. अतएव भगिनीशुल्कं नामार्षविवाहे गोमिथुनमेव। नासुरादिविवाहे। तत्र तु तद्दातुरेव तद्धनविधानात्। 323. यत्तु भारुचिव्याख्यानं तत्प्रौढवादमात्रमित्यनुसन्धेयं। 324. यत्तु वैवाहिकं शुल्कं प्रकृत्या शंखेनोक्तं। स्वं च शुल्कं वोढेति। वोढा वरः। स्वं स्वयमेव शुल्कं गृह्णीयादिति। तदपरिसमाप्ते विवाहे द्रष्टव्यं। 325. विवाहपरिसमाप्तिः विवाहप्रधानहोमपरिसमाप्तिः। 326. अनेनैवाभिप्रायेण याज्ञवल्क्येनाप्युक्तं। मृतायां दत्तमादद्यादिति। शुल्कमलङ्कारादिकं वादद्याद्वोढेति शेषः। वाग्दत्ता या संस्कारात्प्राग्म्रियेत तद्विषयं वचनमित्याह। 327. गौणमातृपरिगणनापूर्वकं तद्धनहर्तृनाह बृहस्पतिः। मातृष्वसा मातुलानी पितृव्यस्त्री पितृष्वसा। श्वश्रूः पूर्वजपत्नी च मातृतुल्याः प्रकीर्तिताः। यदातासामौरसो न स्यात्सुतो दौहित्र एव हि। तत्सुतो वा धनं तासां स्वस्रीयाद्याःसमाप्नुयुरिति। 328. स्वस्रीयो धनस्वामिनो भागिनेयः। स च स्वमातृष्वसुर्धनमाप्नुयात्। एवमाद्यशब्दपरिगृहीता यथाक्रमं स्वकीयमातृतुल्याया धनं समाप्नुयुः। एवमेव सपत्नीसंतानो ऽप्युपमातृधनं तत्संतान तद्भावाद्यभावे समाप्नुयात्। 329. आधिवेदनिके स्त्रीधने विशेषमाह याज्ञवल्क्यः। अधिविन्नस्त्रियै दद्यादाधिवेदनिकं समं। न दत्तं स्त्रीधनं यस्यै दत्ते त्वर्धं प्रकीर्तितं। 330, यस्या उपरि विवाहान्तरं साधिविन्नास्त्री। 331. तस्याः अधिविन्नस्त्रियायाधिवेदनिकमधिवेदननिमित्तं धनमधिवेदनप्रयोजनकं प्रयोजनमिति ठक्। यावदधिवेदनार्थं व्ययीकृतं तावद्दद्यात्। यस्यै भर्त्रा श्वशुरेण वा स्त्रीधनं न दत्तं स्यात्। दत्ते स्त्रीधनमधिवेदनिकद्रव्यस्यार्धं दद्यात्। यावत्तावत्पूर्वदत्तमधिवेदनिकं समं भवति तावद्देयमित्यर्थः। 332. अतःस्त्रीधनस्य दुहित्रादिसम्बन्धः प्रत्यासत्तितारतम्यन्यायनिबन्धनो। न तु वाचनिकः। प्रत्यासत्तितारतम्यं च। पुमान्पुंसो ऽधिके शुक्रे स्त्रीभवत्यधिके स्त्रिया इति विज्ञानेश्वरप्रतिपादितमित्युक्तंप्राक्।

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द्वादशमुख्यगौणपुत्राः ।

366. मातापितापि दद्यातां यमद्भिः पुत्रमापदि । सदृशं प्रीतिसंयुक्तं स ज्ञेयो दत्रिमःसुत इति । 367. आपद्ग्रहणादनापदि न देयः । दातुरयं प्रतिषेधः । 368. तथा एकपुत्रो न देयः । न त्वेकं पुत्रं दद्यात्प्रतिगृह्णीयाद्वेति वशिष्ठस्मरणात् । 369. अनेकसद्भावेऽपि ज्येष्ठो न देयः । ज्येष्ठेन जातमात्रेण पुत्रीभवति मानव इति तस्यैव पुत्रकार्यकरणे मुख्यत्वात् । 370. पुत्रप्रतिग्रह-प्रकारमाह वशिष्ठः । पुत्रं प्रतिग्रहीष्यन् बन्धूनाहूय राजनि चावेद्य निवेशनस्य मध्ये व्याहृतिभिर्हुत्वादूरबान्धवमसन्निकृष्टं गृह्णीयादिति । अदूरबान्धवमित्यनेनात्यन्तदेशभाषाविप्रकृष्टस्य प्रतिषेधः । असन्निकृष्टमित्यनेन ज्ञातिनिषेधः । 371. क्रीतस्तु पुत्रस्ताभ्यां मातापितृभ्यां माता पिता वा विक्रीतः । पूर्ववदेकं पुत्रं ज्येष्ठं च वर्जयित्वापदि सवर्णं इत्येव ।

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373. कृत्रिमःस्यात्स्वयंकृतः । कृत्रिमस्तु पुत्रःस्वयं पुत्रार्थिना धनक्षेत्रादि-प्रदर्शनादिप्रलोभनैः पुत्रीकृतो मातापितृविहीनः तत्सद्भावे तत्परतन्त्रत्वात् ।

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पूर्वोक्तपुत्राणां विभागः ।

377. तथान्येषामपि पूर्वस्मिंसत्युत्तरेषां पुत्राणां चतुर्थांशभागी स्यादित्यर्थ इति । 378. दत्तकग्रहणं क्रीतकृत्रिमादीनां प्रदर्शनार्थं । पुत्रीकरणाविशेषात् ।

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471. तथा च स्वत्वस्य लौकिकत्वान्नैयायिक एव स्वान्यसंक्रमकृत् । न वाचनिकः । इति सिद्धं ।

पत्नीविभागः ।

478. तदुक्तं विज्ञानयोगिना । यत्तु पत्नीदुहितर इत्यादि स्मरणं तदपि स्वामिसम्बन्धितया बहुषूपप्लवमानेषु स्वामीत्वनिवृत्तौ प्रत्यासत्तितारतम्यन्यायनिबन्धनस्य स्वामित्वसंक्रमक्रमस्य निबन्धनमिति । 479. ननु पत्नीदुहितरन्यायावलम्बनेन पत्न्याः पत्नंशहरत्वं स्यात् । तस्माद्विभक्तपत्नीनामपि शरीरार्धं स्मृता जायेत्यादि वक्ष्यमाणन्यायस्य तुल्यत्वात्पत्नंशहरत्वं स्यादिति चेत् । 480. नैवं । विभक्त-पत्नीनां पत्युरेकनियतद्रव्यसद्भावात्तत्रैव पत्नीदुहितरन्यायः । अविभक्तपत्नीनां तु पत्युर्नियतद्रव्याभावात्समुदितद्रव्ये पत्न्यंशग्राहित्वस्यायुक्तत्वात् पत्नीदुहितरन्यायो विभक्तविषय इति ध्येयं । 481. ननु यथैवं स्वामिनां विभक्तानां सर्वेषां भ्रातृणां

स्वर्यातानामसंसृष्टित्वं तत्पत्नीनां न स्यात्। तथा च स्मर्यते। अविभक्तपत्नीनां तद्दायहरत्वमिति। सर्वेषां भ्रातृणामभावे इति शेषः। 482. उच्यते। अविभक्तपत्नीनां तद्दायहरत्वमिति। तत्पितृभ्रातृसद्भावे ऽपि तत्सोदराभावे न सर्वेषां दायस्य प्रत्येकार्थवसितत्वेन नियतत्वसिद्धेरविभक्तत्वे ऽपि विभक्तवद्दायस्य सुग्रहत्वात्। पत्नीनामेवांशहरत्वं। 483. तत्र दुहितृमत्यदुहितृमत्पत्नीविवेको न कर्तव्य इति वैश्यवं मतं।

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535. तस्मादपुत्रस्य विभक्तस्य स्वर्यातस्यासंसृष्टिनो भर्तुर्धर्मपत्नी सकलं स्थावरं जङ्गमं च गृह्णातीत्येवं परं पत्नीदुहितरश्चेत्यादिवचनजाते पत्नीग्रहणमिति स्थितं।

दुहितृविभागः।

536. तत्र पत्न्यभावे दुहितरः।

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540. अप्रोढानूढासमवाये ऽनूढैव गृह्णाति। तदभावे ऊढा दुहिता। यद्यनूढाभवेत्सदिति विशेषस्मरणात्। 541. तथा प्रतिष्ठिताप्रतिष्ठितासमवाये ऽप्रतिष्ठितैव। तदभावे प्रतिष्ठिता। स्त्रीधनं दुहितॄणामप्रत्तानामप्रतिष्ठितानां चेति गौतमवचनस्य पितृधने ऽपि समानत्वात्।

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दौहित्रविभागः।

562. अथ चशब्दाद्दुहित्रभावे दौहित्री धनभाक्। तत्कोपित्वात्। 563. यथाह विष्णुः। अपुत्रपौत्रसन्ताने दौहित्रा धनमाप्नुयुः। पूर्वेषां तु स्वधाकारे पौत्रा दौहित्रका मता इति। 564. मनुरपि। अकृता वा कृता वापि यं विन्देत्सदृशं सुतं। पौत्रीमातामहस्तेन दद्यात्पिण्डं धनं हरेदिति।

पित्रोर्विभागः।

565. तदभावे पितरौ मातापितरौ धनभाजौ। 566. मातृशब्दस्य द्वन्द्वे पूर्वनिपातात्। द्वन्द्वबाधकत्वादेकशेषस्य। विग्रहवाक्ये मातृशब्दस्य पूर्वश्रवणात्। पाठक्रमादेवार्थक्रमावगमात्। धनसम्बन्धे ऽपि क्रमापेक्षायां प्रतीति क्रमानुरोधेनैव प्रथमं माता धनभाक्। 567. तदभावे पितेति गम्यते। 568. किञ्च पिता पुत्रान्तरेष्वपि साधारणः। माता तु न साधारणीति प्रत्यासत्त्यतिशयः। 569. अनन्तरं सपिण्डाद्यस्तस्य तस्य धनं हरेदिति वचनान्मातुरेव प्रथमं धनग्रहणं।

570. मातापित्रोर्मातुरेव प्रत्यासत्तिश्रयाद्धनग्रहणं युक्ततरं। तदभावे पिता धनभागिति विज्ञानेश्वरमतं। 571 चन्द्रिकाकारेण तु पितुरेव प्रथमं धनग्रहणाधिकारः प्रतिपाद्यते। तदभावे पितृगामि तदभावे मातृगामीति विष्णुसूत्रेणेति। 572. चन्द्रिकाकारमताद्विज्ञानयोगिमतमेव सम्यक्। न्यायमूलतया प्रतिपादनात्। 573. अनेन श्रीकरोक्तं पित्रोर्विभज्यधनग्रहणं निरस्तं वेदितव्यं।

भ्रातृविभागः।

574. पित्रभावे भ्रातरो धनभाजः। 575 यथाह मनुः। पिता हरेदपुत्रस्य रिक्थं भ्रातर एव वेति। 576. यत्पुनर्धारेश्वरेणोक्तं। अनपत्यस्य पुत्रस्य माता दायमवाप्नुयात्। मातर्यपि च वृत्तायां पितुर्माता धनं हरेदिति मनुवचनाज्जीवत्यपि पितरि मातरि वृत्तायां पितुर्माता पितामही धनं हरेत्। न पिता। यतः पितृगृहीतं धनं विजातीयेष्वपि पुत्रेषु गच्छति पितामहीगृहीतं तु सजातीयेष्वेव गच्छतीति पितामह्येव गृह्णातीति। 577. तद्विज्ञानयोगी न मन्यते। विजातीयपुत्राणामपि धनग्रहणस्योक्तत्वात्। चतुस्त्रिद्व्येकभागाःस्युरित्यादिना। 578. भ्रातृष्वपि सोदराः प्रथमं गृह्णीयुः भिन्नोदराणां मात्रा विप्रकर्षात्। 579. सोदराणामभावे भिन्नोदरा धनभाजः।

भ्रातृपुत्रविभागः।

580. भ्रातृणामभावे तत्पुत्राः पितृक्रमेण धनभाजः। पितृतो भागकल्पनेति वचनात्।

गोत्रजविभागः।

581. भ्रातृपुत्राणामभावे गोत्रजा धनभाजः पितामही सपिण्डाः समानोदकाश्च। 582. तत्र पितामही प्रथमं धनभाक्। 583. मातर्यपि च वृत्तायां पितुर्माता धनं हरेदिति मात्रनन्तरं पितामह्या धनग्रहणे प्राप्ते पित्रादीनां भ्रातृसुतपर्यन्तानांवहुक्रमत्वेन मध्ये ऽनुप्रवेशाभावात्पितुर्माता धनं हरेदित्यस्य वचनस्य धनग्रहणाधिकारप्राप्तिमात्रपरत्वादुत्कर्षे तत्सुतानन्तरं पितामही गृह्णात्यविरोधादिति विज्ञानयोगिमतं। 584. एतन्न सहते चन्द्रिकाकारः। पित्रादीनां भ्रातृसुतपर्यन्तानां वहुक्रमत्वेन मध्य अनुप्रवेशाभावादित्युक्तं। मातर्यपि च वृत्तायां पितुर्माता धनं हरेदिति क्रमस्योक्तेः। अपुत्रधनं पत्न्यभिगामि। तदभावे दुहितृगामि। तदभावे मातापितरौ गृह्णीयातां। तदभावे पितुर्माता भ्रातरःसपिण्डा इति विष्णुसूत्रेण। मात्रनन्तरं पितामह्या धनभाक्त्वमिति। 585. अत्र विज्ञानयोगिमतमेव सम्यगित्याहुः।

सपिण्डविभाग: ।

586. पितामहाद्यभावे समानगोत्रजा:सपिण्डा: पितामहादयो धनभाज: । भिन्नगोत्रजानां सपिण्डानां बन्धुशब्देन ग्रहणात् । 587. तत्र पितृसन्तानाभावे पितामह: । पितृव्यास्तत्पुत्राश्च क्रमेण धनभाज: । 588. पितामहसन्तानाभावे प्रपितामही प्रपितामहस्तत्पुत्रास्तत्सुतश्चेति । 589. एवमासप्तमात्समानगोत्राणां सपिण्डानां धनग्रहणं वेदितव्यं । अनन्तरःसपिण्डाद्यस्तस्य तस्य धनं हरेदिति स्मरणात् । 590. तेषामभावे समानोदका धनभाज: । ते च सपिण्डानामुपरि सप्त वेदितव्या: । जन्मनामज्ञानावधिका वा ।

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594. यत्तु तेनैवोक्तं । सोदर्या:सन्त्यसोदर्या भ्रातरो द्विविधा यदि । विद्यमाने त्वसोदर्ये सोदर्या एव भागिन इति । तन्नम्लक्षामूलत्वादादरणीयं ।

बान्धवविभाग: ।

595. बान्धवास्तासन्नतरक्रमेणैव स्मृत्यन्तरे दर्शिता: । आत्मपितृष्वसु: पुत्रा आत्ममातृष्वसु:सुता: । आत्ममातुलपुत्राश्च विज्ञेया आत्मबान्धवा: । पितु: पितृष्वसु: पुत्रा पितुर्मातृष्वसु:सुता: । पितुर्मातुलपुत्राश्च विज्ञेया: पितृबान्धवा: । मातु: पितृष्वसु: पुत्रा मातुर्मातृष्वसु:सुता: । मातुर्मातुलपुत्राश्च विज्ञेया मातृबान्धवा: । 596. एतेषां गोत्रजाभावे धनसम्बन्ध: । 597. तत्र चान्तरंगत्वात्प्रथममात्म-बान्धवा धनभाज: । तदभावे पितृबान्धवा धनभाज: । तदभावे मातृबान्धवा इति क्रमो वेदितव्य: । 598. न चात्र पितु:सकाशान्मातुर्बाह्यर्हितत्वात्मातृ-बान्धवानां पितृबान्धवेभ्य: पूर्वमेव धनभाक्त्वमिति वाच्यं । पितु:सकाशाद्दशभ्यो रेभ्यो माता गरीयसीति स्मरणान्मातुर्बाह्यर्हितत्वं न मातृबान्धवानामिति पितृबान्ध-वेभ्य: पश्चादेव मातृबान्धवानां धनभाक्त्वमिति युक्तमुत्पश्याम: ।

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वानप्रस्थधनविभाग: ।

614. एवं योनिसम्बन्धविद्यासन्ततो: प्राधान्येन यौनसन्ततेर्दायग्रहणक्रममुक्त्वा विद्यासम्बन्धसन्ततेर्दायक्रमाह याज्ञवल्क्य: । वानप्रस्थयतिब्रह्मचारिणां रिक्थभागिन: । क्रमेणाचार्यसच्छिष्यधर्मभ्रात्रेकतीर्थिन: । 615. वानप्रस्थस्य यतेर्ब्रह्मचारिणश्च क्रमेण प्रतिलोमक्रमेणाचार्यसच्छिष्यधर्मभ्रात्रेकतीर्थिन. रिक्थस्य धनस्य भागिन: । 616. ब्रह्मचारी द्विविध: । उपकुर्वाणो नैष्ठिकश्च । 617. उपकुर्वाणस्य धनं मात्रादय एव गृह्णन्ति । 618. नैष्ठिकस्य धनमाचार्य इति । अत्र विद्यासम्बन्ध-

स्यैव यौनसम्बन्धाद्ग्रहणीयत्वात्। 619. यतेस्तु धनं सच्छिष्या एव गृह्णन्ति। 620. यतिश्चतुर्विधः। कुटीचकबहूदकहंसपरमहंसभेदात्। 621. कुटीचकबहूदकहंसानामाचार्याभावे शिष्यस्य धनग्रहः। 622. परमहंसस्य त्वाचार्याभावाच्छिष्य एव गृह्णाति। 623. वानप्रस्थस्य धनं धर्मभ्रात्रेकतीर्थी गृह्णाति। एकतीर्थी एकाश्रमी। धर्मभ्राता प्रतिपन्नो भ्राता। एकगुरुशिष्यतया भ्रातृत्वेन स्वीकृत इत्यर्थः। 624. धर्मभ्राता चासावेकतीर्थी चेति विशेषणसमास इति विज्ञानेश्वरः। 625. धर्मभ्रातुराश्रमान्तरगता इति वसिष्ठवचनमिच्छया विक्रयसम्बन्धो नास्तीत्येवं परं। 626. अह्नो मासस्य षण्णां वा तथा संवत्सरस्य वा। अर्थस्य निचयं कुर्यात्कृतमाश्वयुजे त्यजेदिति वानप्रस्थमधिकृत्योक्तेः। कौपीनाच्छादनार्थं च वासांसि बिभृयात्तथा। योगसंभारभेदांश्च गृह्णीयात्पादुके तथेति यतिमधिकृत्योक्तेः। नैष्ठिकस्यापि शरीरयात्रार्थं वस्त्रादिसंबन्धो ऽस्त्येवेति। तद्विभागकथनं युक्तमेवेत्यवगन्तव्यं।

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संसृष्टधनविभागः।

710. अथ पत्नीदुहितृन्यायस्यापवादमाह विष्णुः। संसृष्टधनं न पत्न्यभिगामीति। 711. अत्र भारुचिः। अविभागदशायामिव संसर्गदशायामपि धनं अनेकपुरुषस्वत्वसमावेशादेकपुरुषापायेन तत्स्वत्वनिवृत्तावपि पुरुषान्तरस्वत्वानां तथैवावस्थानात्को गृह्णीयादित्यपेक्षाया अनुत्थानात्तादृगपेक्षोपनिपातिनः पत्नीदुहितृन्यायस्य बाधकत्वेनात्र संसृष्टिन्यायस्यावतार इति।

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716. संसृष्टित्वं न सर्वेषां। अपि तु पितृभ्रातृपितृव्याणामेव। 717. तथा च बृहस्पतिः। विभक्तो यः पुनः पित्रा भ्रात्रा वैकत्र संस्थितः। पितृव्येणापि वा प्रीत्या स तत्संसृष्ट उच्यत इति। 718. विष्णुरपि। पितृव्यपितृभ्रातृभिरेव संसर्गो नान्यैरिति। 719. अत्र भारुचिः। वैकल्पिको ऽयं संसर्गविधिरिति। 720. अयमर्थः। पितृव्येण वा पित्रा वा भ्रातृभिर्वा स्वरुच्या संसर्गः। पितृव्येणाथ वा प्रीत्येति प्रीतिपदश्रवणादिति। 721. अतएव संभूयसमुत्थाने ऽप्येतस्यावश्यभावो नास्ति। तत्र पत्नीदुहितृन्याय एवावतरति। संभूयकारिणां मध्ये मृतस्य पत्न्यादिरेव तदंशांशभागिति विष्णुवचनात्। 722. अयमर्थः। पितृव्यपितृभ्रातृभिरेव संसर्गो नान्यैरिति संसृष्टधनं न पत्न्यभिगामीति च विष्णुवचनं पत्नीदुहितृन्यायस्य बाधकं सत्। नियामकं पित्रादिभिरेव संसर्गो नान्यैरिति।

अतःसंभूयकारिणामयं न्यायो नावतरतीति। 723. अत्र विशेषमाह विष्णुः। संसृष्टीनां पिण्डदोंऽशहारीति। 724. अत्र भारुचिः। पिण्डदो ऽंशहरश्चैषामित्यत्र पिण्डदत्वमेवांशग्रहणे प्रयोजकमिति। 725. अयं भावः। पिण्डदो ऽंशहरश्चैषामिति पाठक्रमादर्थक्रमो बलीयानित्यंशहरत्वमेव पिण्डदत्वप्रयोजकमिति सकलस्मृतिसिद्धं। 726. तथाप्यत्र संसृष्टिस्थले पाक्षिकापचयभावाभ्युपगम-साहसमालित्वरूपन्यायस्य पिण्डदत्वरूपान्तरंगन्यायो बाधक इति प्रदर्शनमात्रपर-मित्युक्तं। न तु वस्तुगत्या पिण्डदत्वमंशग्रहणप्रयोजकमिति। 727. अतोऽस्मिं-प्रकरणे संसृष्टिन्यायान्तरंगन्यायौ यथार्हं प्रवर्तेते। अतश्च क्वचित्संसृष्टिन्यायेन संसृष्टिन एव धनग्राहित्वं। क्वचिदन्तरंगन्यायेन संसृष्टिन एव धनग्राहित्वं। क्वचित्त्वन्तरंगन्यायेनैवासंसृष्टिन एव धनग्राहित्वमुक्तं। 728. एवं त्रैविध्ये ऽपि न पत्न्यादिर्धनग्राहीति प्रतिपादनाध्यायफलं सिद्धं। 729. अतश्च संसृष्टिनो ऽपुत्रस्याभ्रातृकस्यापितृकस्य धनं पितृव्यगाम्येवेति विष्णुवचनस्यार्थः। 730. अतएव याज्ञवल्क्यः। संसृष्टिनस्तु संसृष्टीति। 731. यत्र पुनः पितृव्यसोदरौ संसृष्टौ तत्र संसृष्टिधनं सोदरगाम्येव न पितृव्यगामीत्याह याज्ञवल्क्यः। सोदरस्य तु सोदर इति। 732. सोदरस्य संसृष्टस्य धनं सोदर एव गृह्णीयात्। संसृष्टि-पितृव्यादिस्तु संसृष्टी ऽपि न गृह्णीयात्। तस्यैव तत्पिण्डदानाधिकारादिति वचनार्थः। 733. संसृष्टिनो मरणानन्तरं जातस्य पुत्रस्यैवांशो दातव्यः। न गृहीतव्य इत्याह याज्ञवल्क्यः। दद्याच्चापहृतांशं जातस्य च मृतस्य चेति। 734. यत्र पुनः भिन्नोदरा भ्रातरः केच न संसृष्टाः। सोदरभ्रातरो न सन्ति पितृव्यादयो ऽपि संसृष्टास्तत्र भिन्नोदरभ्रातृगाम्येव धनमित्याह याज्ञवल्क्यः। अन्यो-दर्यस्तु संसृष्टी नान्योदर्यधनं हरेदिति। असंसृष्टीति शेषः। 735. यथाह विष्णुः। भिन्नोदराणां संसृष्टिनो गृह्णीयुः। * * * * *

741. नन्वेवं पुत्राद्विभक्तस्य पितुःस्वभ्रातृभिः संसृष्टस्य मरणे तद्धनं संसृष्ट-भ्रातृगाम्येव स्यात्। न पुत्रगामि। 742. नैवं। पत्नीदुहितरन्यायवत्-संसृष्टन्यायस्याप्यपुत्रविषयत्वात्। 743. यथाह संसृष्टिप्रकरणे नारदः। भ्रातृ-णामप्रजाः प्रेयात्कश्चिच्चेत्प्रव्रजेत वेति। * * * * *

748. एवं च यथा विभक्तो ऽपि पुत्रः पुत्रत्वेनैव पत्न्याद्यपेक्षया प्रबलः। तथैवासंसृष्टो ऽपि पुत्रः पुत्रत्वेनैव संसृष्टिभ्रात्रपेक्षया प्रबल इति तद्गाम्येव धनं।

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763. अतो युक्तं संसृष्टिनामसंसृष्टिनां पुत्राणां पितृद्रव्यं तुल्यमेव साम्यमिति।

765. यथाह मनुः। संसृष्टास्तेन ये वा स्युर्विभजेत स तैःसह। 766. अस्यार्थः। ये च विभक्ताः पित्रा सह संसृष्टास्तैःसार्धं पितुरूर्ध्वं विभक्तो विभजेत्। असंसृष्टैस्तु भ्रातृभिःसह विभक्तस्य न विभाग इति तात्पर्यार्थ इति। 767. यत्तु मनुनैवोक्तं। संसृष्टिविभागं प्रक्रम्य। एषां ज्येष्ठः कनिष्ठो वा हीयेतांश-प्रदानतः म्रियेतान्यतरो वापि तस्य भागो न लुप्यते। सोदर्या विभजेयुस्तं समेत्य-सहिताःसमं। भ्रातरो ये च संसृष्टा भगिन्यश्च सनाभय इति। * * *

769. तदयमर्थः। भिन्नोदरसंसृष्टिनामपचयभारसहिष्णुत्वमंशग्रहणे निमित्तं एकोदराणां तु पिण्डदानाधिकारनिबन्धनान्तरंगत्वाय एवांशग्रहणे निमित्तं। उभय-निमित्तं संसृष्टैकोदराभावे वेदितव्यं। भगिनीनां तु संसृष्टधनविभागसमये दायभागसमय इव किञ्चित्किञ्चित्प्रीत्या देयं न तु विभागः। तासां तु संसर्गा-प्रसक्तेः। प्रसक्तानामेव विभागः। अतश्च भिन्नोदराणां संसृष्टानामसंसृष्टानामे-कोदराणां समविभाग इति सिद्धं। 770. अपरार्कचन्द्रिकाकारादयस्तु संसृष्टा-पुत्रद्रव्यं प्रथमतो भ्रातृगामि। तदभावे पितृगामि। तदभावे तत्पत्नीगामीति शङ्खोक्तवाचनिकक्रमेण पत्नीदुहितर इति नैयायिकक्रमो बाध्यते। अतश्च सोदर्या विभजेयुस्तमिति वचनं क्रमपरमित्याहुः। 771. तन्न। शङ्खोक्तक्रमस्य नैयायिकत्वं प्रतिपादितं प्राक्। 772. शङ्खवचने पत्नीग्रहणं संसृष्टधनविभागसमये पत्न्या अपि भगिनीनामिव यत्किञ्चिद्देयमिति ध्येयं। 773. अतश्च भारुचिविज्ञानयो-गिमतमेव सम्यक्।

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379. तथा च कात्यायनः। उत्पन्ने त्वौरसे पुत्रे चतुर्थांशहराःसुताः। सवर्णा असवर्णास्तु ग्रासाच्छादनभाजना इति। सवर्णाः क्षेत्रजदत्तकादयः। ते औरसे सति चतुर्थांशहराः। चतुर्थांशो नाम चतुर्थस्य योऽंशःसमत्वेन परि-कल्प्यते तत्तुल्यांशः पञ्चमांश इत्यर्थः। पञ्चमांशहरा दत्तक्रीत्रिमादिसुताः पुनरिति श्रुतेः। पुनरिति पश्चादुत्पन्न औरस इत्यर्थः। असवर्णाः कानीनगूढोत्पन्नसहोढ-पौनर्भवा। तेषां यद्यपि सवर्णत्वादिनिमित्ते कानीनत्वादिव्यपदेशः। तथापि सन्दिग्धेऽपि सवर्णत्व असवर्ण इति व्यपदेशः। *

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854. इति वीरश्रीप्रजापतिप्रतापरुद्रदेवमहाराजविरचिते स्मृतिसंग्रहे सरस्वतीविलासे व्यवहारकाण्डे दायविभागाख्यस्य पदस्य विलासः।

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* By mistake this paragraph was omitted from its right place.

VYAVAHARA MAYUKHA.

CHAPTER IV.

SECTION I.

Of Property or Ownership, (Svatva),

1. Generation of property.

1. Now we come to speak of such ownership as is necessary for deciding regarding heritable property. The distinctions as to its power and operation, are produced by purchase, acceptance, &c. The reason of this is, that the causes of purchases, &c arise from worldly transactions alone, not from the Shastra; for proprietary rights are understood even by those not acquainted with that sacred code, in deducing it from which the subject is needlessly enlarged. Bhavanatha is of this opinion in his Nyaya Viveka.

2. Text of Gautama explained.

2. As for this text of Gautama:* "An owner is by inheritance, purchase, partition, seizure, or finding Accept-ance Text of Gautama is for a Brahman an additional mode; conquest for a Kshatriya; gain for a Vaisya or Sudra," it is by way of repetition in matters established in the world. For people admit inheritance [to be] in that, which becomes one's own by the mere loss of the owner's property therein. The word *mere* is used to include purchase, seizure, [or acceptance] and the rest. Here even, in such like loss, the word inheritance, has force; by reason of its joint application [in the text] to purchase and the other means of ownership. And the same may be proved by the agument, that 'without admitting a cause [there can be no effect].'

3. Argument that ownership is generated by birth not by partition.

3. According to Dharesvara Acharya: 'The ownership of sons and the rest, in the wealth of the father, is not generated previously during his life, but is produced by partition.' And the author of the Smiti Sangraha says the same. But it is not so; for, from the plain sense of this text: "Even by birth, ownership in wealth is obtained," and other similar ones, it is evident that, ownership in the father's wealth depending on the filial relation, is generated even by the productionof a son. And [the

same results] from this text of Yajnavalkya:‡ "For the ownership of father and son is the same, in land which was acquired by the grandfather, or in a corody, or in chattels which belonged to him." 'And this does not mean, that the reason of the acquisition of ownership is found in the grandfather's death, and not in the production of a son,' for [if it did], such ownership would be wanting, in case no grandson were to be born to him up to the time of his death. In this way therefore, either the word *grandfather* is of no use [in the argument]; or it follows a fortiori [prasakteh] that there is no equal ownership in [property] acquired by the great-grandfather, and other [more remote ancestors]. And the argument of 'cause and effect' might here be repeated.

4. Text of Devala.

4. As for this text of Devala* "When the father is deceased, let the sons divide the father's wealth; for sons have not ownership, while the father is alive and free from defect;" the first hemistich comprehends up to the time of partition, because it declares the [ascertainment or] instrument, or agents, of the [act or] ceremony; but the last hemistich refers to their dependance, as declaring the same person's praises; but it does not mean the absence of ownership. It is also made clear in this text of Sankha: "From this it results, that while the father lives, sons shall not divide the wealth: even if there should be afterwards an increase by [means of] them, still the sons are unfit, by reason of their dependance upon the wealth and religious offices of the father." Here *dependence* is specified immediately, with a view more strongly to inculcate the foregoing prohibition. '*Even if by them subsequently*, [be made]' is the proper interpretation. *By them*, by the sons, subsequently to their birth. *Increase*, what is obtained by acceptance, or the like. The proposition is this: 'if in property accepted by sons or other [heirs], their dependence [is clear] from the [father's] undisputed ownership, how [can we doubt their dependence] in property acquired by the father.' And this dependence attaches to partition, supererogatory moral observances, industry, and the like. So also Harita. "While the father lives, sons are not independent in regard to the receipt and alienation of wealth, to the partition of it, or to censure." By the words *receipt* and *alienation*, supererogation is pointed out. *Censure*, according to Madana, means, reproving of the slaves and other [household servants.]

5. Anonymous text ...ching the

5. As for this text. "The father is master of all gems, pearls and corals;-but neither the father nor the grandfather, is so of the whole immovable estate," it also means

the father's independence, only in the wearing and other [use] of ear-rings, rings, [&c], but not as far as gift or other [alienation]: neither is it with a view to the cessation of the cause of his ownership on the production of a son. This very meaning is made manifest also by [the text] noticing [only] gems, and such things as are not injured by use. Even so, this text: "Though immovables and bipeds have been acquired by the man himself, a gift or sale of them should not be made without convening all the sons," is only aprohibition against their gift, sale, or the like, not against the use of them.

father and grandfather explained.

6. Now the pre-existing undefined [joint] ownership of more than one brother or other [co-heir] is, by partition between each, defined and made apparent. On this point some one has said: "This [ownership] is produced different, as a separate portion, by the destruction of the former ownership contained in the common property." But, justly speaking, since prolixity arises in considering the production of another ownership on the destruction of the former; therefore [separate] ownership, existing even originally from community [of interest], is discovered by partition, by the result furnishing separate substances or things.

6. Ownership is pre-existing and merely defined by partition.

7. To return to the Text: *Acceptance is for a Brahman an additional mode*; that is, according to some, 'What is obtained by acceptance, is the Brahmna's additional [mode of] increase.' With reference to inheritance, and the other [five modes common to all], this acceptance is, for a Brahman alone, an additional mode It results therefore, that *conquest* and the other [modes enumerated] are like manner [additional] for Kshatriyas and the rest.

7. Resumption of the argument of Gautama's text.

8. In conquest also, where the property of the conquered consists in houses, lands, money, or the like, there alone [ownership] is acquired by the conqueror; but in the revenues of the conquered, the conqueror possesses the same, but no property in them. Even so in the sixth [book of the Mimamsa]: "The whole earth must not be given away by the king of the world, neither a [whole] district [mandala] by the ruler of that district." But the property in each village, house, or other [portion] of a whole country or a district of it, belongs solely to the ower of the soil [bhumika] or other [proprietor]. The revenue only [may be taken] by the prince. Therefore, in gift, or other alienation of such lands as are here made mention of, a gift of the land is not brought about; we must only suppose a mere livelihood [given by the prince out of his revenues]. But in purchases from the owner

8. The King has no right to the soil but merely to the revenue arising out of it.

of the soil, even ownership accrues in the [property transferred], whether houses, land, or other. Then indeed, the benefits of a gift of land also may be obtained from it [by buying land from the owners and then giving it away in charity.]

9. To Vaisyas and Sudras.

9. Gain, [Nirvishta] is that which is acquired by usury, agriculture, commerce, tending of animals; and [secondly] what is acquired by service. From the dictionaries, we find the synonymes of 'Gain' to be, 'Hire,' and 'Enjoyment.' Hire again, is defined to be Service. Enjoyment, is usury and the rest. Here, the first mentioned [are sources of gain] to the Vaisya class: The second [service] to the Sudra class.

10. Conclusion drawn.

10. Now, the reason of sale and other transfer of property, is to be deduced solely from worldly motives, [and not from law; with which proposition we set out.] And in like manner, popular practice is established in the ownership of calves and other [produce] of a man's own cow, or the like: but it would not be so, if it depended on such means only as the law furnishes [for deciding such a question], because we do not learn from the law the means of distinguishing the produce of one's own cow or the like.

11. Opponents argument.

11. Yet, [an opponent may say]: 'There may be ownership in daughters, sons, or other issue of a wife, in the same way as there is in the produce of one's own cow; [and], a case of necessity being assumed, [for instance,] by the rule: "In a visvajit sacrifice a man gives the whole of his possessions," the gift of every thing being granted, the necessity thence arises for the gift of a daughter or son, and therefore your reasoning from the sixth book of the Mimamsa, [that they are not to be given], will be at variance with such rule.'

12. No property in wife.

12. [I answer] No; because there being no such property in a wife as there is in a cow or the like, there cannot be any property in the children produced from her: And in a worldly sense, the reason of ownership is determined, solely in the production of that which contains the principles of ownership. Neither can it be said, that property may also exist in wives, from acceptance [in marriage]; for then, by reason of the absence of property possessed by Kshatriyas and the other [two classes in] their wives, from their want of the [right of] acceptance, there is also a want of it [property] in their issue.

13. Argument drawn

13. Therefore, since the text: This law is propounded by me in regard to sons equal by class," restricts the

taking of an adopted son solely to one equal in class; and since with respect to Kshatriyas and the rest acceptance of an adopted son is even secondary; then also with respect to Brahmans, it is not the principal mode; because it is contrary to reason to have two contrary, but connected, explanations of performing one and the same rite. from affiliation of an adopted son.

14. Neither can it be said that a Brahman alone is entitled to the rite of accepting a son, and that a Kshatriya is not entitled, since we know that the right [of accepting a son] does pertain to them, from the following and other texts of Saunaka and others: "A daughter's son as well as a sister's son, are affiliated by Sudras." Even so, in the marriage of a Brahman with the daughter of a Kshatriya or other [lower class], by the Brahmya rite, the secondary rank mnst be admitted, both for the gift and acceptance; otherwise they are principal. Thus two explanations [of the same rite] are [here again] opposed As regards Kshatriyas, the admissibility of all to Brahmya nuptials and the rest is in no degree contrary [to texts.] Even so Misra in the Tantra Ratna has said: 'The gift of sons and the rest is inferior [or secondary].' 14. Powers of adoption not restricted to Brahmans.

15. Neither are we to suppose [absolute] property, merely because the laws of language [admit the expression], 'own wife, son daughter; for in the same way as we say 'own father,' 'own mother,' and the like, the expression also arises in speaking of kindred. If so, the power of the word 'own,' might likewise affect the term kindred, for in dictionaries we find: "In the word *kindred*, the pronoun own [is feminine]; in *soul* [it is masculine]; in *kindred*, it is [common to] three [genders]; and in the expression peculiar wealth, it is neuter." 15. A verbal objection overruled.

16. However, since in the sixth book of the Mimansa, gift of a slave born in the family is mentioned, this point must be considered. Since property in the mother is wanting, from absence of the complete power of gift, acceptance, purchase, sale, and the like, then in the household-slave begotten on her, there is also an absence of the power, from the impropriety of it. This conclusion is conformable to the argument with which we set out. 16. Consistency preserved.

SECTION II.

Of Heritage, (Daya.)

1. Definition of the term.

1. Wealth not re-united, nor put back again into a common stock, and [still] admitting of partition, is Heritage. By *not re-united*, I mean to exclude wealth [never before joint, and now first] united for purposes of gain or or the like, because the term 'partition of heritage,' does not apply to dividing of [wealth] thrown together by merchants. In like manner we must also exclude re-united property, in the sense in which that term will hereafter be defined. Even as [we find] in the Smriti Sangraha: "That which is received through the father, and that received through a mother, is described by the term Heritage: The partition of it is now related." And in the Nighantu, it is said: "The learned define heritage to be, wealth of a father, which admits of partition." The word *father* is merely put to denote relations in general, as a part for the whole.

2. It is of two kinds. Obstructed. And unobstructed.

2. This heritage is of two kinds, obstructed and unobstructed. When the life of the owner of the property, or that of his sons, or other [heirs], is interposed, that [property] is [termed] obstructed; for instance, the wealth of uncles, and the like. But where ownership accrues to sons, or other [next heirs], solely from affinity to the owner, without reference to other means of acquiring property, [the heritage] is then unobstructed, as, the wealth of a father. This is the definition of heritage.

SECTION III.

Of the Partition of Heritage.—(Daya-Vibhaga).

1. Definition of the form.

1. This Narada declares: "Where a division of the paternal estate is instituted by sons, that becomes a topic of litigation, called by the wise, partition of heritage." The word *sons* includes [by synecdoche] grandsons, and the rest. And in the same way, by *paternal* [is intended the estate of] the grandfather and the rest. But Madana (Ratna) has the very words, of father and the rest. And this definition, of 'partition of heritage,' has been declared.

2. Even when there is a total failure of common property, a partition may also then be made, by the mere declaration, 'I am separate from thee" A partition may even be a mere mental distinction. This exposition clearly distinguishes the various qualities of this [term]. 2 It may take place without the existence of property.

SECTION IV.

The Periods of Partition,—(Vibhaga-Kala)

1. Manu. "After the death of the father and mother, the brothers, being assembled, may divide among themselves the paternal [and maternal] estate; but they have no power over it, while their parents live [unless the father choose to distribute it]" By inserting the word *and* the consummation of [both their] deaths is not required. Even thus, in the Madana Ratna and Smriti Sangraha: "A partition of the father's wealth may take place, even whilst the mother lives, for this reason, that without her husband, the mother does not from her independence also derive ownership. "A partition of the mother's wealth also may take place, in like manner while the father is alive, for, if there be issue, the lord [of the wife] is not lord of the wife's wealth. 1 Partition of the paternal estate, may take place at three periods, viz, after the father's death.

2. This is opposed to a text of Brihaspati: "On the demise of both parents, partition among brothers is allowed: and even while they are both living it is right, if the mother be past child bearing." Narada: "Let sons regularly divide the wealth, when the father is dead; or when the mother is past child bearing, and the sisters are married; or when the father's sensual passions are extinguished." *Sensual passions*, desire. *Extinguished*, averse. The expression, *and the sisters are married*, must be taken collectively with [the mother's] child-bearing, and extinction of [the father's] passions, after the simile of the crow's eye.* 2. Or before it. if the mother be past child-bearing.

3. Gautama: "After the demise of the father, let sons share his estate. Or, while he lives, and the mother be past child-bearing, if he desire partition." From this expression, *if he desire*, partition is declared legal also, before the mother is past child-bearing, by the father's wish alone. 3. Or, with the father's consents, at any time.

* The crow is supposed to be able to look at two different directions at once with his two eyes.

4. Partition of ancestral property, may take place even against the father's consent.

4. Brihaspati declares partition in some cases without his wish: "The father and sons are equal sharers in houses, and lands, derived regularly from ancestors: but sons are not worthy [in their own right,] of a share in wealth acquired by the father himself, when the father is unwilling:" From which it results, that sons are worthy of a share in property, acquired by the grandfather or other [ancestor] even though the father do not wish it.

5. With exception of such as he had recovered by his own exertions.
Over which, as well as over his own acquisitions, the father has full dominion.

5. In the grandfather's property also, partition in some cases depends on the father's pleasure, say Manu and Vishnu: "And if a father by his own efforts, recover [a debt or property unjustly detained] which could not be recoved before [by his father], he shall not, unless by his free will, put it into parcenary with his sons, since in fact it was acquired by himself." Brihaspati: "Over the grandfather's pro perty, which has been seized [by strangers] and is recovered by the father through his own ability, and over [any thing], gained by him through science, valour, or the like, the father's full dominion is ordained. He may give it away at his pleasure, or he may defray his consumption with such wealth; but on failure of him, the sons are pronounced entitled to equal shares."

6. Circumstances invalidating the father's power.

6. Narada: "A father who is afflicted with disease, or influenced by wrath, or whose mind is engrossed by a beloved object or who acts otherwise than the law permits, has no power in the distribution of the estate. Harita: "If the father be free from desire, old, perverted in mind, or long afflicted with disease, partition of his wealth [may, be made]." *Free from desire*, according to the Madana Ratna, means, without desire of partition. *Perverted in mind*, following practices contrary to law. The sense is, 'that partition may be made, even against the will of [such a] father.'

7. The eldest son, in that case, manages the estate and the distribution of it; or the next after him, with his consent.

7. Harita says, that when the father is incapable, partition takes place by the concurrence of the eldest son: "But if he be decayed, remotely absent, or a fflicted with disease, let the eldest son manage the affairs as he pleases." Sankha and Likhita: "If the father be incapable, let the eldest son manage the affairs of the family; or, with his consent, the next brother conversant with business." *The next*, the one born after him. Partition by the pleasure of one capable of the maintenance and other [care] of the family [is intended.] From this it results that if all be so [qualified], it is [immaterial or] undetermined.

8. On voluntary partition by the

8. Yajnavalkya: When the father makes a partition, let him separate his sons [from himself] at his pleasure, and either [dismiss] the eldest with the best share, or [if he

choose], all may be equal shares." A voluntary partition alone [is denoted] by the last hemistich; since the dependence of the will in the two cases mentioned, has been above declared, from the impropriety of independence; [and further] from the inconsistency [which would result in such construction] of the text: [For then he might give] to one a lakh [of rupees]; to another a single kauri; to a third, nothing at all; which would be no [fair] exposition [of the law]. A distinction in the share of the eldest, is noticed by Manu: "The portion deducted for the eldest, is a twentieth part [of the heritage], with the best of all the chattels; for the middlemost, half of that, [or a fortieth]; for the youngest, a quarter of it, [or an eightieth]:" But, if there be no deduction, the shares must be distributed in this manner: Let the eldest have a double share, and the next born, a share and a half, [if they clearly surpass the rest in virtue and learning;] the younger sons must have each a share: [if all be equal in good qualities, they must all take share and share alike."]

father, shares defined.

Partition by deduction as defined by Manu.

9. Between twins, the birthright of that one first born is thus declared by Manu: "The right of invoking Indra by the texts, called Subrahmanya, depends on actual priority of birth; and of twins also, [if any such be conceived] among [different] wives, the eldest is he, who was first actually born." "Among twins, to him whose face [kinsmen] first see after his birth, belong [the privileges of] male offspring, [the right of performing obsequies] for his father, and [the honours of] primogeniture."

9. Primogeniture in case of twins.

10. However, in the Pinda Siddhi and other medical books, the right of primogeniture is awarded to the last born [of twins]. This is opposed by the above [texts] in the matter at issue, because it has no foundation in the sacred writings; like as: "Purification ensues after a month [to Sudra."] However, the right of primogeniture of the last born is declared in the Bhagvata, in this text and the like: "When a double fœtus is conceived, the last conception is that first brought into the world." [But] this doctrine is also opposed to the above texts [of Manu and Devala], whilst in the Puranas, many practices are disclosed, contrary to the written law. According to some, the question ought to be decided by the customs of the country. But what I stated at first, [in favour of the first born], is the proper doctrine.

11. And this partition by deduction, is not respected in the Kali [or present] age, for it is one of the things [expressly] set aside in the present age, as has been already proved by me in my Samaya Mayukha.

11. Partition by deduction, illegal in modern times.

12. The father, in partition with an only son, takes a double share

12. Narada allows the father a double share: "Let the father, making a partition, reserve two shares for himself." This text relates to an only son. For in the Madana Ratna is this of Sankha and Likhita: "If there be one son, let [the father] himself reserve two shares, and the best of the slaves and cattle." The word *one* relates to the most excellent. By the author of the Amara [Kosha], 'chief,' 'other,' 'only,' are declared the synonymes of *one*. All which, according to the Parijata, denote a son well-qualified.

13. The only son has even a right to half the ancestral property.

And no other division of ancestral property is legal.

13. Brihaspati, however, declares the right to only an equal share with his sons, even if there be only one, in property acquired by the grandfather: "In wealth acquired by the grandfather, whether it consist of moveables or immoveables, the equal participation of father and son is ordained." Yajnavalkya: "For the ownership of father and son is the same, in land which was acquired by the grandfather, or in a corody, or in chattels [which belonged to him]." Katyayana: "When the father and the sons even, take all that, which has been made upon the common wealth, in equal shares, it is called a legal partition."

14. Two texts apparently to the contrary, explained away.

14. As for this text of Yajnavalkya: "A legal distribution, made by the father, among sons separated with greater or less shares, is pronounced valid;" according to Madana, Vijnanesvara and others, it means, 'If the [distribution], made by the father be legal, it cannot be set aside.' This text again, of Narada: "For such as have been separated by the father with equal, greater, or less, allotments of wealth, that is a lawful distribution: for the father is lord of all," relates to the former ages.

15. In equal partition between a father and his sons, the mother gets a share.

To be made by additions her private property previously received.

15. In a case of equal partition between a father and his son, a share belongs also to the wife; says, Yajnavalkya: "If he make the allotments equal, his wives to whom no separate property had been given by the husband or the father-in-law, must be rendered partakers of like portions." If any had been given, they are only to get half, for the adds: "Or if any had been given, let him assign the half." *The half*; meaning, so much as, with what had been before given as separate property [stridhana], will make it equal to a son's share. But if her property be [already] more than such share, no share [belongs to her].

16. Resignation of a share permitted, under certain

16. The same author treats of a want of wish to participate, in the case of a son able to earn, and not desiring a share: "The separation of one who is able to support himself, and is not desirous of participation, may be completed by giving him some trifle." According to the Mitak-

shara it means that: 'Any thing whatever may be given for the sake of preventing the desire being entertained by his sons, of receiving [a share of] the heritage.' **forms to prevent future claims.**

17. An equal partition, after the death of the father is declared in another smriti: "Let sons divide equally both the effects and the debts, after [the demise of] both parents." Harita: "When the father is dead, the partition of the inheritance should be made equally." **17. Partition after the father's death must be equal.**

18. Yajnavalkya: "Of heirs dividing after the death of the father, let the mother also take an equal share." Vishnu: "Mothers receive allotments according to the shares of sons." In another smriti [it is said:] "A mother, if she be dowerless, shall in a partition by sons, take an equal share." The meaning is, that if she have dower, she shall take only as much as, with that dower will make her an equal sharer with her sons. But no share [belongs to her], if her property be more than such share. **18. In this case the mother takes an equal share with the sons.**

19. Vyasa declares the [right to] share, even of a stepmother, and the paternal grandmother: "Even childless wives of the father are pronounced equal sharers and so are all the paternal grandmothers: they are declared equal to mothers. From this [word] *all*, the step-grandmothers also are to be included. **19. As do the step mothers, and paternal grandmothers.**

Yajnavalkya declares the mode of partition among the sons of different brothers: "Among grandsons by different fathers, the allotment of shares is according to the fathers." It means, that if there be one son of one, two sons of a second, three of a third [or the like,] their shares will be solely according to the number of the fathers, and not in the number of the sharers themselves. **20. Partitions among sons of different brothers, is according to their fathers.**

21. Katyayana: "Should a younger son die before partition, his share shall be allotted [by the elder brother] to his son, provided he had received no fortune from his grandfather." "That son's son shall receive his father's share from his uncle, or from his [uncle's] son; and the same] [proportionate] share shall be allotted to all the brothers according to law." Or [if that grandson be also dead] his son takes the share; beyond him succession stops." The *younger son* [anuja] denotes also that the eldest [is bound to portion off his brother's son]. *Stops* at the greatgrandson. **21. Brother's sons also share with their uncles.** **Or even their sons' sons, but no farther.**

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* Mandlek says' half Ardham. In the text published by him the Ardham is not to be found. He is clearly fell into an error.

* 'Younger son' should be undivided younger brother.

† Levelihood would be more accurate their fortune the younger son it is incorrect.

‡ It should 'be the younger brother includes also the shops should be equal *i.e.* beyound the elder brother.

22. Explanation of the above restriction.

22. We must thus understand it: 'The son of the greatgrandson, or the rest will not, on the death of the father, [grandfather, and great grandfather, without interval after the death of the great-grandfather,] obtain his wealth, being of another [line],* so long as his son, or other [heirs] are alive. In default of son, grandson, [and greatgrandson] in the general [family] only, he also will take [the succession].'

23. Referring it to a re-united family only.

23. And this does not refer to an undivided family, but to a reunited one. For it is said by Devala: "Partition of heritage among undivided parceners, and a second partition among divided relatives living together [after re-union], shall extend to the fourth in descent: this is a settled rule." And "Be it debt, or written contract; or a house, or arable land, descended from his grandfather, he shall take his due share of it, when he comes, even though he had been very long in a foreign country." "If a man leave the common family and reside in another province, his share must undoubtedly be given to his male descendants when they appear." It means: 'between the great-great-grandfather, and his sons, separated when in a state of union, and [afterwards] re-united.'

24. Removal of the limitation in case of residence aboard.

24. This refers to those fixed in the same district; because, where they reside in different districts, it will descend even to the fifth, as is declared by Brihaspati, in treating of residence in other lands: "Be he the third person, or the fifth or even the seventh, [that is, in the second, or fourth, or even in the sixth degree], he shall receive the share that gradually descends to him, on full proof of his birth and family-name."

25. Partition is according to the mothers, in case their sons are of equal number.

25. Brihaspati declares a partition in some cases according to the mothers: "If there be many [sons] sprung from one [father], alike in number, and in class, but born of rival mothers, partition must be made by them according to law, by the allotment of shares to the mothers." Vyasa: If there be many sons of one man, by class, a distribution among the mothers is approved."

26. If not, then according to the number of the sons themselves.

26. Brihaspati gives this opposite example: "Among brothers, who are equal in class, but vary in regard to the number [of sons produced by each mother], the shares of the heritage are allotted to the males [not to their mothers]."

27. Partition among sons of different classes.

27. Yajnavalkya states a partition among sons of different classes: The sons of a Brahman, in the several tribes, have four shares, or three, or two, or one; the children

§ Being of another is incorrect. It is not to be found in the text.

of a Kshatriya have three portions, or one; and those of a Vaisya take two parts, or one." *The sons of a Brahman*, that is, borne to him by a Brahmani, a Kshatriya, a Vaisya, and a Sudra. Those of a Kshatriya, those by a Kshatriya, a Vaisya, and a Sudra. Those of a Vaisya, those borne to him by a Vaisya and a Sudra

28. Brihaspati: "Land, obtained by acceptance of donation, must not be given to the sons of a Kshatriya, or other wife of inferior tribe: even though his father give it him, the son of the Brahmani may resume it when his father is dead." Devala: "The son begotten on a Sudri woman by any man of a twice-born class, is not entitled to a share of land: but begotten on her, being of equal class, shall take all the property [whether land or chattels]: thus is the law settled." *Of land*, acquired by purchase, and the other modes also. Yet he does obtain a share of the [moveable] wealth.

28. Land is confined to the son borne by the wife of equal class alone.

29. But the son by a Sudra woman, not legally married, does not obtain a share, even of the moveable property. And Manu: "The son of a Brahman, a Kshatriya, or a Vaisya, by a woman of the servile class, shall inherit no part of the estate [unless he be virtuous; nor jointly with other sons, unless his mother was lawfully married:] whatever his father may give him, let that be his own."

29. Illegitimate sons do not inherit even moveable wealth.

30. Brihaspati declares this distinction after the father's death: "The virtuous and obedient son, borne by a Sudra woman to a man who has no other offspring, should obtain a maintenance; and let kinsmen take the residue of the estate." Gautama: A son by a Sudra woman, born unto a man who leaves no [legitimate] offspring, shall, if he be strictly obedient like a pupil, receive a provision for his maintenance." *A provision, for his maintenance*; or, 'as a means of livelihood.'

30. But must be maintained.

31. The same author: "Sons termed Pratiloma [shall have an allotment] similar to that of the son produced by a woman of the servile class." *Sons termed Pratiloma*, meaning, those produced by a woman, higher than the begetter with respect to class.

31. Shares of sons begotten in inverse order.

32. Yajnavalkya states a distinction with regard to a son begotten by a Sudra on a woman not married to him: "Even a son begotten by a Sudra on a female slave, may take a share, by the father's choice. But if the father be dead, the brethren should make him partaker of the moiety of a share." *Choice* the pleasure of the father. From specifying *by a Sudra*, it is clear, that a son begotten by a twice-born man on a female slave does not obtain a

32. Illegitimate sons of Sudras take a share by the father's choice and may claim half a share after his death.

share, even by the father's choice : Neither after the death of the father, will he get the half; nor, in the absence of sons or other [heirs], will he get the whole. This is the argument of the Madana Ratna, and others.

33. A son born after a partition by the father, alone succeeds to him.

But is not bound to pay debts under certain circumstances.

33. A distinction is thus declared respecting a son born after partition : One born [to a man] separated [from his sons] will alone take the father's [wealth]." Brihaspati: "All the wealth, which is acquired by the father himself, who has made a partition with his sons, goes to the sons begotten by him after the partition : those born before it, are declared to have no right. :" "As in the wealth, so in the debts likewise, and in gifts, pledges, and purchases." They have no claims on each other except for acts of mourning and libations of water." If there be nothing but debts, then that [son is not even bound to pay those debts, without receiving a share from those formerly separated; for, as will afterwards be shewn, "He who takes the estate, must be made to pay the debts of it."

34. But re-union with the father gives a right to share with that son.

34. But if any one of them have re-united [with the father], a partition with that [son born after partition] shall be made. As is declared by Manu : "A son born after a division, shall alone take the paternal wealth : or he shall participate with such of the brethren as are re-united with the father."

35. Distinction with regard to posthumous sons' shares.

35. Yajnavalkya states a distinction, at a partition after the father's death, with respect to a son born immediately afterwards, by a mother, or step-mother or brother's wife, whose pregnancy was uncertain : "When the sons have been separated, one who is [afterwards] born, of a woman equal in class, shares the distribution." The partition is to be thus effected : Something is to be contributed by all the brothers, or others [who had previously shared], each something out of his own share, until the [posthumous son's] share is equal to their own. Vishnu : "Sons with whom the father has made a partition, should give a share to the son born after the distribution."

36. Deduction to be first made for expenses and income.

36. And this we must understand as allowing for [subsequent] expenses and income. For if it be so, then, says the same author : "His allotment must absolutely be made, out of the visible estate, corrected for income and expenditure." *Out of the visible estate*, out of the wealth actually forthcoming.

37. Partition not to be made till delivery of pregnant women.

37. At the time of a partition among brothers, this distinction is noted by Vasishtha : "Partition of heritage [takes place] among brothers, [having waited] till after the delivery of such of the women as are childless [but pregnant]." *Having waited* is omitted [and supplied].

38. A further distinction in a partition after death of the father is stated by Brihaspati: "For younger brothers, whose investiture and other ceremonies have not been performed, their elder brothers shall perform them, out of the collected wealth of the father." The term yaviyasa, [is substituted for yaviyamsa, with the freedom exercised by ancient sages] after the manner of the Vedas, by omitting the regular inflection [num] and the prolongation of the vowel [dirgha]. **38. Initiation of younger brothers.**

39. The mention of *brothers*, brings in the sisters also. Even so the same auther: "And those unmarried daughters who are as yet uninitiated, must be initiated* by their eldest brother, even out of the father's wealth, according to the [usual] rite." **39. And of sisters, to be made by the eldest brother out of the common estate.**

40. Yajnavalkya [premising]: "Uninitiated brothers should be initiated by those, for whom the ceremonies have been already completed:" states a distinction in regard to initiation of sisters: "But sisters should be disposal of in marriage, giving them as an allotment, the fourth part of a brother's own share;" meaning, that a fourth part of such share as would be allotted to a son of such class as the sister [happens to be,] being given to each sister [according to her rank], they are to be initiated. **41. Amount to be allowed for marriage of daughters.**

Sections paragraphs 41 to 45 dealing with different kinds of obsolete sons are omitted.

46. Here we must mark, that with the exception of the given son, [all the other ten] secondary sons are set aside in the Kali or present age, for we read, in the prohibitions of it: "The acceptance likewise of affiliations, other than those of a legitimate and *adopted* son." **46. 7th.**

SECTION V.

On Adoption (Dattaka).

1. Manu says: "He is called a son given [dattrima], whom his "father *or* mother affectionately gives as a son, being alike [by class], and in a time of distress; confirming the gift with water." According to Madana: 'The disjunctive '*or*,' means, that if the mother be not present, the father alone may give him away; and if the father be dead, the mother the same; but if both be alive, then even both.' From his using the word in distress, (it seems that) if not in distress, he must not be given. **1. Qualifications of an adoption.**

* 'Initiates' should be 'married.'

2. The want of them affects the gift as well as the giver.

2. Vijnanesvara says, 'This prohibition regards the giver only (and not the gift); as affecting the person, and not the religious ceremony, [kratvartha'] But it is not so; for the certainty of the religious ceremony is ascertained from the invisible [or prospective] nature of this [rule regarding gift of a son] in the text. Or, if indeed a visible [existing] object [be allowed for obviating the exception, as to distress], still, by reason of the absolute necessity for the object of the rule being prospective in regard to the theme in hand, in going beyond it, the establishing of the invisible [prospective] benefit produced by the ceremony, and not before existing, [is brought about]. Some however say, 'To the word distress, the sense of a prohibition does not apply, because of the want of that quality of the Parisankhya rules, [which would show] non-existence of distress, by the absurdity they would involve, among other things, of quitting the straightforward sense of the text: and that we require only to suppose some sign or motive of distress; not that, when distress is the inciting motive, by not giving the son, the crime of [not relieving] distress [will be incurred]; because the mere connexion of name and person in this text is to be understood, and there is, in [declaring] the necessity of distress, a want of the actual completion of the gift.

3. Moreover, the assertion made by him [Vijnanesvara] in his Chapter on marriage that: 'In transgressing the prohibition against [espousing] sickly brides, and the like, it is merely an opposition to a manifest object, [or rule], whilst the state of a lawful wife is superinduced notwithstanding,' is by the above argument overruled.

4. A disputed term examined, and defined.

4. *Alike*, according to Medhatithi, means, 'not by tribe, but by qualities suitable to the family: accordingly, a Kshatriya, or a person of any other inferior *class*, may be the given son [dattaka] of a Brahmana. But Kulluka Bhatta says, it means 'equal in *class*,' and this is correct; for Yajnavalkya, after enumerating the twelve sorts of sons, in this way: "the legitimate son is one procreated on the lawful wedded wife:" &c, says: This law is propounded by me in regard to sons equal by class." And this I will make clear by two texts of Saunaka, to be cited hereafter [para. 9]. Vijnanesvara also declares the same.

"By the eldest son, as soon as born, a man becomes the father of male issue;" 'for the eldest chiefly fulfils the office of a son, and is therefore not to be given.' And this prohibition also regards the giver only, and not the taker, according to the same authority.

5 This prohibition n ght indeed apply to the giver alone, provided this text of Manu contained a prohibition of the gift of an eldest son But it does not for there is a want of proof [in tl e hrmative] and because the ex pression *bec mes the fat er f male i ue* is a declaration of parentage alone and moreover that even as regards its applicablity to the discharge f debt il ne Accordingly the last hemistich ex ctly agrees with this interpretation "And is exonerated from lebt to his ancestors such a son therefore is entitled to take the whole *The whole* the wealth

5 Prohibition proved to apply both to the giver and receiver

6 And a male child alone becomes adopted not a female He [s *th*] is called a son given From the pronoun *he* enter d in the text [being masculine and] referring to connexion between n me and person we must understand one where a m ther and father are agents where affection water n l proper qualific tions exist with necessity as a reason and where the act of gift equality of class and male sex [are united] in the same way as from the [masculine] pronoun *him* in the holv text Let a Brahman eight years be initiated and let *him* [*tam*] be instructed we infer that the age is eight years the order that of a Brahman and the sex male his initiation with the string completed &c

6 Analysis of the original text of Manu,

7 From this results the refutati n of what some persons have held *viz* That the terminations *ktre* and *mam* being common to all genders that the word *dathima* ending in *n a m* therefore si ce there is no distinction between it and the act by which a gift is concluted, it may be applied in lil e manner even to a girl when given whether to her husband or to any other

7 That a female may not be adopted

8 Saunaka s text about mode of adoption is omitted as it appears in several places in this book

9 ' The adoption of a son by any Brahman must be made from amongst Sapindas or on failure of these an asapinda or one not so connected may be adopted other wise let him not adopt Of Kshatrivas in their own class positively and [on default of a Sapinda kinsman] even in the general family following the same primitive spiritual guide [guru] Of Vaisyas from amongs those of the Vaisya class [Vaisyajatishu] of Sudras from amongst those of the Sudra class Of all and the tribes likewise, in [their own] classes only and not otherwise But a daughtr s son, and a sister s son are affiliated by Sudras " By no man having an only son [ekaputra] is the gift of a son to be ever made By a man having several sons [bahuputra] such gift is to be made ' Let the best of it regenerate [the Brahman] to the extent of his ability, bestow a gratuity on the officiating priest. A king [Ksha-

9 What persons are capable of being adopted

triya, the produce of] half even of his dominion: next in order, a Vaisya three hundred pieces; a Sudra, the whole even of his property: if indigent, to the extent of his means." *Bearing the reflection*, equal to, [or like].*

10. Argument upon the daughter's and sister's son the Sudra.

10. *A daughter's son and a sister's son*: Now, as in the instance of the stick, in the formula: "[The sacrificer, yajman] delivers the stick, to [the Brahman, who personalties] Maitra Varuna:" though the stick [really] be the object required, from the necessity of its previous existence, still, by the use of the fourth case [to], Maitra Varuna is alone denoted as the object, as is the most fit, from his act of uttering the summons in the formula: "The holder of the stick [he who personates Maitra Varuna] then utters the invocations [to the deities, for their presence in the sacrifice]." Even so, in this place, since the state of non-release from debt [results from want of a son], and because the sixth case [of Sudras in the text] has the sense of the fourth [to or for], therefore both the daughter's and the sister's son alone, are to be admitted for Sudras, as the means [of relieving the father from the debt]. So, by the propriety of the restriction of the rule is declared: thus, "The daughter's son and the sister's son alone are for Sudras," But if the impossibility of it for Sudras [be urged], by reason of the impropriety of the restriction, [I answer]; they are both exhibited by the texts as the objects for Sudras alone, since it would be absurd to make the restriction apply to the agent, [parisankhya] in respect to Brahmans and the rest.

11. Conclusion drawn that they are the most proper the Sudras.

11. Therefore the daughter's son even, are the most proper for Sudras: In default of them, another also [may be adopted], if of similar class, as declared by the same author [para. 9: "Of Sudras from amongst those of the Sudras class." This word, *class*, is not [necessarily] implied by its connexion with daughter's son and sister's son, alone, for there is no [necessary] mutual connexion between the states, of 'daughter's son, sister's son, and common caste:' And there is a risk of our [thereby] making an absurdity of parallel passages of the same author. This is fully explained by my father in his Dvaita Nirnaya, and the same is the rule [*achara*] ordained by sages.

12. Assertion to the contrary, in the Suddhi Viveka, controverted.

12. And the assertion of their right [to adopt] being demonstrable in the very same way, as [the argument upon] the word Nishadasya pati,† the assertion in the Suddhi Viveka, that 'there is a want of title for Sudras to celebrate the acceptance of son with a Homa *(a)* authenticated by Veda mantras,' is hereby refuted.

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* I have altered one or two sentences to make the translation literal.

† The correct translation is "as the right of the Nishada to perform sacrifices is established."

13. The Homa however, being accompanied with Mantras, must be celebrated by them through the instrumentality of a Brahman, in conformity to the text of Parasara: "When fasts, vows, burnt sacrifices, ablution at a tirtha, silent meditation, or prayer, and the like, are performed by a Brahmana [on the part of another] the benefit of them accrues to him who caused their performance." And the very same is declared, both by Smartha and Harinatha.

Ceremony for Sudras, to be by means of a Brahman.

14. However, what [in seeming contradiction] Parasara himself adds: "The Brahmana who, for the sake of dakshina performs Homa with sacrificial materials furnished by a Sudra, shall himself become a Sudra and the Sudra shall become a Brahmana," means, according to Madana, that the whole benefit of the act accruses to the Sudra, whilst the crime fully attaches to the Brahmana.

Another text of Parasara explained.

One law, for women and Sudras.

15. The right also pertains to women, equally as to Sudras, by reason of the text: "Women and Sudras are governed by the same law."

16. Vasishtha: "Man, produced from virile seed and uterine blood, proceeds from his father and his mother, as an effect from its cause. Therefore his father and mother have power to give, to sell, or to abandon, their son. But let no man give, or accept, an only son: for he is [destined] to continue the line of his ancestors. Let not a woman give or accept a son, unless with the assent of her husband." "A person, being about to adopt a son, should take an unremote kinsman, or the near relation of a kinsman, having convened his kindred, and announced his intention to the king, and having offered a burnt offering, with recitation of the prayers denominated 'vyahriti' in the middle of his dwelling. But, if a doubt arise, let him set apart, like a Sudra, one whose kindred are remote; for it is declared [in the Vedas]: 'Many are saved by one.' When a son has been adopted, if a legitimate son be afterwards born, the given son shares a fourth part."

The proper objects for adoption pointed out.

17. Therefore, if there must be an order from the husband, it is for a married woman only, as above shewn; but, for a widow, even without it, [adoption] may be made, with the permission of her father, or, on failure of him, of the relations [jnati] under this precept: "Let a female be taken care of, by her father while a child, by her husband when married, and by her sons, in her old age. If none of these exist, let her other relations [jnati] take care of her. A woman is never fit for independence." This has been declared by Yajnavalkya only with reference to difference of age, and the circumstances of a woman,

Deduction in favour of widows' power to adoption.

being under the power of her husband. In case of his being dead, or [unable] from old age, or other [disqualification], or from helplessness, then [she is] indeed under the power of her sons or other relatives.

A similar text of Katyayana explained, only to relate to married women.

18. By Katyayana also it has been said "If a woman, without the orders of her father, husband, or son, should perform obsequies, such obsequies are of doubtful validity." What is here said of the orders of her father, husband, &c. relates only to the difference of age. *Obsequies* here means, rites performed for the other world; wherefore, at whatever age a married woman may [require to] receive the command of her husband, that very command is in the case of a widow not required, since the command of any other person, not here mentioned, is nowhere declared requisite. Therefore the right of adoption, even without the order of her [late] husband, does pertain to a widow.

Explanation of Vasishtha's text in favour of the brother's son first.

19. The *unremote kinsman*, means, in each case, the Sapinda nearest [to the adopter]; among whom again, the nearest of all is the brother's son for: "If among several brothers of the whole blood, one of them have a son born, Manu pronounces them all fathers of a male child by means of that son." And the Mitakshara has the same. And this must be the proper motive of that precept; for it is impossible there can be any other. The *remote* kinsman, means 'one of another caste' And my father has said that; "A married man, who has even had a son born, may become an adopted son." This also is reasonable, for it is not in opposition [to other maxims].

A text of the Kalika Purana, cited and explained.

20. As for this text of the Kalika Purana: "O Lord of the earth, a son, having been initiated under the family name of his father, unto the ceremony of tonsure inclusive, does not become the son of another man. The ceremony of tonsure and of investiture being indeed performed, under his own family name, sons given, and the rest may be considered as issue: else they are termed slaves. After their fifth year, O king, sons given, and the rest are not sons [But] having taken a boy five years old, the adopter should first perform the sacrifice for male issue." It relates to asagotras only. *Unto the ceremony of tonsure inclusive*; The particle, *any*, here is inceptive, used for the sake of entirely including all such cases for if it be meant as a limit conclusive, it will have the objection of being in opposition to the ceremonies of tonsure and investiture [specified in the text.] But much reliance is not to be placed on this last passage, because it is not to be found in two or three copies of the Kalika Purana.

'Son given,' of two

21. The son given is of two sorts; first, simple ;* second,

* *Kevala.* Ed.

son of two fathers, (dvyamushyayana). The first, is one bestowed without any special compact; the last, is one given under an agreement to this effect, 'he shall belong to us both.' Here the first will perform the funeral ceremony, and the other rites for the adopter only, as may thus [be demonstrated]: In the desire of accomplishing the acceptance of a son, by the term 'son' being in the second person, in the phrase, "being about to adopt a son [para 16] and the like, detailing the rules for the ceremony, the production cf a son is declared. And not that the adopter can possibly imagine, 'his filial relationship is derived from my capacity of begetting.' Therefore, from the word 'son,' after having instanced the whole duties of a son, we must admit the production of one, as far as requisite, and not previously existing. Hence, in the family of the acceptor, the condition may [in this way] be brought about: From which result the acts suitable to the different relations, of son, father, and the rest. Even as is declared by Manu: "A given son must never claim the family and estate of his natural father: the funeral oblation follows the family, and estate, but of him who has given away his son, the obsequies fail.

kinds: 'Simple adopted,' and 'Son of two fathers.

22. *Follows the family and estate*, goes after the family and estate, the latter expression corresponding generally with the term "goes along with." The *given son*, the simple adopted; since, in the case of a Dvyamushyayana, the [double] obligation of family connexion and the like, will be hereafter declared. The *funeral oblation* according to Medhatithi, Kulluka Bhatta, and others, means the funeral ceremony and other Sraddhas. According to other authors again the *funeral oblation*, means Sapinda connexion; and *obsequies*, the funeral and Sraddhas. The correct interpretation is this: As by the passage: "He, who has begotten a son, and whose hair is [still] black, may maintain a sacred fire," the difference as to his age and condition is exemplified, and again, the difference of place, by the passage: He measures out the inner portion and the outer portion of the alter; even so, in this place, having merely exemplified the acts connected with the obligation of the funeral oblation for the natural father and the rest, by the terms, 'family,' 'estate,' 'funeral oblation,' and 'obsequies,' the cessation of them is declared.

Explanation of Manu's text.

23. From this also results, the establishment of the cessation of family connexion with the father's whole brother, and the rest. Therefore also even the son begotten by the simple adopted son, shall perform [his father's] Sapindikaran, Parvana obsequies, and the rest, in conjunction even with the [original] adopter. Even so, his son also.

A text of Katyayana held to refer to the 'son of two fathers.'

24. However, what Katyayana, opening the discussion of the 'son of two fathers,' by this text: "Now, when the family connexion of sons, either adopted, purchased, or son of an appointed daughter, remains unsettled, through their acceptance by another they become sons of two fathers," and the like, says: "If there be no offspring of these adopters by their own wives, they [the secondary sons,] take the estate, and give the funeral oblations to three ancestors; if there be no [offspring], to either [the giver or receiver], they will give the oblation for both. Having separately considered both in one Sraddha, they shall call upon both of them." Has reference to the 'son of two fathers,' because of his premising: *They become sons of two fathers.*

The obligations and rights of the son of two fathers in regard to obsequies and succession, defined whether other sons exist, or not.

25. If either the natural parent, or the adoptive father have no other male issue, the Dvyamushyayana, or 'son of two fathers,' shall present the funeral oblation to him, and shall take his estate; but not so if there be [male issue]. If both have legitimate sons, he offers an oblation to neither, but takes a quarter of the share allotted to a legitimate son of his adoptive father: from this text of Vasishtha: When a son has been adopted, if a legitimate son be afterwards born, the given son takes a fourth part:" and likewise this of Katyayana: "If a legitimate son be born, the rest are pronounced sharers of *a fourth part*, provided they belong to the same tribe: but if they be of a different class, they are entitled to food and raiment only." The reading in the Kalapataru is, 'a third part.' Those of *the same tribe*, according to Vijnanesvara are, the son of the wife, the son adopted, and the rest.

His duties defined in dufault of sons to both.

26. But if sons are wanting to both, then he shall perform a single Sraddha to both also; in the mode declared above, by the term "in one Sraddha," &c. Moreover in the Hemadri is a text of Krashnajini: "As many as there may be degrees of forefathers, with so many, their own forefathers, let sons given and the rest associate the deceased; in order, their sons with two forefathers, their grandsons with one, should [do] the same. The fourth degree, at pleasure. This [sapinda relation] extends to three degree." "At the regular seasons, there is no distinction of degrees: but on the [anniversary] day of death, having invoked them singly, let him perform the Sraddha according to the proper rite." Which sense is consonant also to the text of Katyayana. [para. 24.]

Detailed explanation of the text.

27. This is the meaning: 'The son of two fathers, and the rest, shall perform the Sapindikaran of those dying in the families of both the real and adoptive father, together with those of the same degree, [that is] in company with the father [of the deceased], and the rest. But the sons

of those adopted, and the rest, shall perform their Sapindikaran together with that of both the natural, and adoptive [father]. Their grandsons also shall associate their real father with their adoptive grandfather, and their real great-grandfather,' *The fourth degree*, their great-grandson. *Pleasure*, desire; that is, they shall invoke the adopter, or not, [as they please]; but the real father, they shall even summon. *At the regular seasons;* that is, at the days of new moon, [amavasya] and other seasons, the Sraddha according to the degrees of [forefathers] of the real and adoptive fathers, is to be celebrated. But on the anniversary of death, having invoked the single person alone, let them celebrate the Ekoddishta sraddha for him.

Opposite argument against the term 'simple adopted.'

28. Some however say: 'Since the rite of simple adoption is not [mentioned], it does not exists; and there is no agreement to the effect: 'He belongs to us both", because no rite for it exists. One taken without this agreement, therefore, is even a son of two fathers.—And even by him, either a double Sraddha, or a single one, may be celebrated, by invoking [singly or together] both his real and adoptive father, in the Amavasya and other [Sraddhas.] But the Sapindikaran, Parvana, and other Sraddhas, must be performed for the adopted son, in company with both his real and adoptive father, by his son. Even so, by his son, and the rest.

Answered and refuted.

29. This must be considered. Because, though the phrase 'simple adopted' is certainly nowhere mentioned, still, however, this [meaning] satisfactorily results, even from the declaration of the entire cessation of the connexion with the real father and the rest, by the above recorded text of Manu [para. 21] which prohibition does not apply in a Dvyamushayana adoption. Further: A marriage in the family of the procreator [Viji] within seven degrees, which is altogether illegal according to the text of Gautama: "With the kinsmen on the side of the father, viz. of the procreator, [Viji] beyond the seventh degree; and with those on the mother's side, beyond the fifth, &c.," would be unmeaning in a Dvyamushayana adoption, because the Sapinda affinity [to the procreator] still exists therein [beyond that]. Therefore, the term, 'simple adopted,' must necessarily be expressed, to make the same agree with that of the text, because of the declaration of the prohibition of the Sapinda connexion.

A text of the Pravaradhyaya adduced in favour of the argument.

30. Moreover, in the Pravaradhyaya [it is said]: "They who become sons of two fathers, [dvyamushayana] whether adopted, purchased, or the rest, cannot take in marriage any one of either Gotra, after the example of Saunga and Saishira." In which also, the term *either Gotra*, is spoken of the Dvyamushayana. And the prohibition of

connexion in the real family [Gotra] is declared by the text of Manu; which is the difference [between the two]. By the distinction also, between adopted son, 'simple,' and 'son of two fathers' [the term, simple] is proper to be included; whence even the propriety of the term 'simple adopsed son' is established

And supported by a quotation from the Mimamsa.

31. Even so Bhatta Somesvara, satisfactorily reconciles the one doctrine, under the text of Manu [para. 21]: "That there was a cessation of the Sapinda connexion between Arjuna [as] the son of Kunti, born after she was given in adoption by [her father] Sura to Kuntibhoja, and Subhadra, [as] the daughter of Vasudeva, who was the son of Sura," with the opposite opinion, "that Arjuna could not marry the said Subhadra, as might seem to result from that text of Gautama [para. 29], applying solely to the prohibition of of [a wife] come of the father's kindred, by adducing the affirmation of the commentaries in favour of the utter exclusion of the family connexion [after the adoption.]

An author's opinion refuted.

32. As for what some author says: 'That the Sapinda connexion of Kunti with the family of Sura, is declared by Somesvara, under the text of Gautama, to continue through seven degrees, the reason is, that he has not read the book. Therefore, the text of Gautama, after having previously declared the cessation of Sapinda relationship, refers to the prohibition [of marriage] in the family of the natural father, and not as considering the subject of Sapinda relationship. In this way, the correctness of the terms, son 'simple adopted,' and 'son of two fathers,' being established, the possibility of an agreement to the effect: "He shall belong to us both," [para 21] is likewise established; for the object is manifest, by the accepter knowing him to be 'son of two fathers.' And again, the Sapinda relationship of the simple adopted son, extends, in his adoptive father's family, to seven degrees on the father's side, and to five degrees on the mother's side.

The authority of three texts denied, to

33 As for these texts of Vriddha Gautama: "The sons given, purchased, and the rest, who are adopted from those of his own general family, by the observance of form, enter the lineage [gotrata, of the adopter]. But the relation of Sapinda is not included," as well as of Brihat Manu: "Sons given, purchased, and the rest, retain relation of the natural father, as extending to the fifth and the seventh, degrees: like this, their general family, which is also that of their adopter," and moreover of Narada: "For the sake of religious merit, [being adopted] like real son, under the family name of each respectively [tat tat gotrena] sons [who are] reared: for such, merely participation in a share, and [the oblation of] the funeral cake, is declared" they are, all three, not of good authority; [at least, if their

authority be good, they are to be used only for the sake of determining the want of Sapinda relationship of] the Dvyamushyayana, as far as seven generations, in the family of the adopter; for, in the case of a simple adopted son, his Sapinda relationship, as far as seven generations in the family of the adopter [Palaka] is declared [to commence] by the before quoted text of Gautama, [para. 29] and because his Sapinda relationship at the same time, in the family of his real father, is declared to cease by the text of Manu [para. 21]. apply to the simple adopted son.

34. As for the following matter, written by certain respectable authors in discussing the subject of Sapinda relationship: "Yet if [an adopted son's] investiture and other initiatory rites, have been celebrated in the general family [gotra] of his real father, his Sapinda relationship to his real father's family [kula] is retained, both to the father, and to the mother, to the fifth degree [from the mother,] and to the seventh [from the father]: but to three degrees in the family of the adopter, by reason that there is a want of the state of begetting, and of investiture, to the author of the secondary paternal relation, the adopter. However, if the adopted son be [so] initiated in the general family of the adopter, his [Sapinda relationship] with the adopter and the rest [of his family, will continue] even to seven generations, and to five [as above."] its foundation is not known. The reasoning of certain authors declared to be unfounded.

35. 'Again: If the paternal relation exists not, by reason of the absence of the acts of begetting, of investiture, and the like, in what manner arises the adopted son's Sapinda, relationship to either [even,] as far as three degrees or his performance of Sraddha and other ceremonies for the adopter and the rest of his family? Neither can it be said, 'the paternal relation and Sapinda relation are [necessarily] connected,' because by the this on the absence of the first, the want of the Sapinda relationship would ensue. The result of it is this: Sapinda relationship even [of the adopted son], with the adopter and the rest of his family, has been already pronounced from the text of Gautama and others [para. 29:] "With the kinsmen on the side of the procreator beyond the seventh degree." And this is conclusive. Conclusion drawn.

36. Now this is the rite for gift and acceptance of a son. In this matter, the power of giving [in adoption], where there are more sons than one, allows even of any one of them, not being the eldest; and that of acceptance, attaches to one who has not had a son born, or whose sons are dead. The right of married women [to adopt], is good with the orders of the husband; in default of him, of their [own] fathers, and the rest. Of Sudras Summary in conclusion.

adopting] the daughter's son, or the sister's son, are to be taken, and no other. Ay the other [superior classes] however, the nearest Sapinda relation; in default of them, the remote [kindred], but not one of another caste.

The gift inceptive.

37. Then the giver, on the day [fixed] for the acceptance, having duly called to mind the [proper] time, and the other [considerations], and having thus vowed: 'I am about to make a gift of my son for the cessation, between myself and the rest [of my family], and this son, of the several duties arising from the reciprocal connexion, at present existing between [us, as] father, son and the like' shall perform the Ganesa puja, svasti vachan, matrika puja, Vriddhi sraddha, and the other rites.

The acceptance inceptive.

38. The accepter too, having fasted on the day preceding that for the acceptance, and on the next day having summoned his kinsmen, and made known his taking a son to the king; having called to mind the time, and other [considerations], and having thus vowed: 'I am about to take (this person) as a son, to the cessation of the mutual connexion ' of father, son, or the like, at present subsisting between him, and his procreator and the rest (of that family,) and for the accession between him and me, and the rest (of my family), of the duties mutually arising from the respective connexion of father, son, and the like (by this adoption), and having performed, the Ganesa puja, Svasti vachan, Matrika puja, Vriddhi Sraddha, Acharya varan, and the various reverences to be made, after a special vow to the acharya, with the ear-rings, ring, suit of clothes, turban, Madhuparka and the rest, let him give a feast to three Brahmans, and to his kindred.

Officiating priest's duties.

39. And the Acharya, having thus vowed: 'I am about to do my proper duties,' and having performed the marking out of the altar, and the other [acts] as far as the consecration of the fire, inclusive, shall celebrate the rites enjoined in the words of the Vedas and the rest, as far as the straining of the clarified butter inclusive.

Gift completed.

40. Then let the accepted, having gone near the giver, thus beg, 'Give me this son'; and the giver, with relation of the five prayers [the initial words of the first, of *which are*] *Ye yajnena, having called to mind the time, and the rest, having repeated his motives as above detailed, shall declare, 'I give you this son,* adorned with ornaments, according to my ability.' This is the gift of his son, commencing with the words of the Vedas.

Acceptance completed

41. Then the accepter, having accepted him with the prayer devasya tva, and the others, and having repeated the Kama stuti in the form enjoined by his own Sakha, having inaudibly repeated the mystical invocation and

angat, &c having kissed the forehead of the child, let him carry him within his own house adorned with clothes and so forth accompanied with rejoicings

42 Next the Achar a avir g performed the setting up of the clarified butter nd the est s far as the portioning of it inclusive hav ng performed a burnt offering even with the clarified b i ter with the Vyahriti incantation, both backwards ar d in due order having dressed the oblations let him offer i h int offering He then commences the princip l burn offering of dressed oblations for acceptance of a son with the wo ds of the Veda Having commenced with the w r is I ibhyam agne &c let him conclude with those commencin Pragvadattah Thus ends the rite of id p ion

Priests duties continued and concluded

SI CTION VI

Partiti i f del ts and f concealed effects

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1 This sett ed I return [to my subject] Katyayana states a distinction in partition of debts The debt of the father one incurred by a parcener himself on account of the debts of the father and one specially his own debts so incurred must be examined on a partition with the kinsmen *On account of the debts of the father* incurred for the sake of discharging the father s debts *Specially his own* [contradicted by other] than himself for the maintenance of his family The same author says 'A debt contracted by a brother a paternal uncle or a mother, for the [support of the] family must be fully discharged by the co heirs when partition is made

1 The debts to be considered at a partition are of three kinds

2 The same author also says in case the debt be less than the property But having given the debt [to the creditors] and what was bestowed through affection, let them divide the balance *Bestowed* promised Narada 'What remains after discharging the father s donation, and after payment of his debts may be divided by the brethren so that their father continue not a debtor ' *The father s donation* what had been promised by the father The same author says what has been given for religious purposes and through affection and the debt which has been added by himself, that [and] the visible [estate], let them divide [any other debt] is not to be given, out of the paternal estate The meaning is this,

2 Such debts when covered by the estate to be first paid and the rest due to be divided

Payment out of the paternal estate

restricted to particular obligations.

'What has been given for religious purposes, as well as through affection ; [that is] what it has been made by himself ; such debts [and the visible estate] they shall divide. Payment [dana] is not [allowable], out of the paternal estate, of debts other than these.'

3. Partition of effects concealed and discovered after partition; with the mode prescribed for their discovery.

3. The same author also says, in suspicion of effects undiscovered: "A house, arable land, or quadrupeds, discovered [after partition, as the property of the deceased], must be [equally] divided ; if it be justly suspected that effects are concealed, a discovery by ordeal is prescribed by law." "Thus Manu declared, that household utensils, beasts of burthen, and milch cattle, ornaments, and workmen, must be divided, when discovered [among the heirs]: if effects are [suspected to be] hidden, a discovery must be obtained by the Kosha mode of ordeal." *Workmen*: slaves, and the like. Here even, the Kosha ordeal itself has been fixed in such matters, in the chapter on ordeals, by this very authority: "In sustaining the truth of doubts in partition among heirs, at all times, [and] in settling a multitude of proofs [kriya], let them even undergo the Kosha ordeal."

SECTION VII.

On property not liable to division, (Avibhajyam.)

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1. Certain property not subject to partition.

1. Manu says: "Wealth, however, acquired by learning, belongs exclusively to any one of them who acquired it ; so does any thing given by a friend, received [at or] on account of marriage, or presented as a mark of respect to a guest." Vyasa: "wealth gained by science, or earned by valour, or received from affectionate kindred, belongs, at the time of partition, to him [who acquired it], and shall not be claimed by the coheirs." *Received from affectionate kindred* ; [Saudayakam ; this term] will be hereafter explained.

2. In gained without assistance from the common stock.

2. This [wealth] must be understood to be acquired, without loss to the father's estate. Thus also Yajnavalkya: "Whatever else is acquired by the coparcener himself, without detriment to the father's estate, as, a present from a friend, or a gift at nuptials, does not appertain to the coheirs ; nor shall he who recovers hereditary property which had been taken away, give it up to the parceners: nor what has been gained by science.

3. Special rule regarding

3. But Sankha declares a special rule, relating to the recovery of land, derived from ancestors but long lost;

"Land [inherited] in regular succession, but which had been formerly lost, and which a single [heir] shall recover solely by his own labour, the rest may divide, according to their due allotments ; having first given him a fourth part." That is, 'having given to the recoverer a *fourth part*, of the recovered, property, they shall divide the balance equally, with the recoverer.' land recovered.

4. Manu says: "What a brother has acquired by his labour without using the patrimony, he need not give up to the coheirs ; nor what has been gained by science. Vyasa: "What a man gains by his own ability, without relying on the patrimony, he shall not give up to the coheirs, nor what he acquired by learning." Acquisition by *learning* is explained by Katyayana: "Wealth gained through science, which was acquired from a stranger, while receiving a foreign maintenance, is termed acquisition through learning." Other text adduced.

5. The same author elucidates this term: "What is gained by the solution [of a difficulty], after a prize has been offered, must be considered as acquired through science, and is not included in partition [among coheirs."] What has been obtained from a pupil, or by officiating as a priest, or for [answering] a question, or for determining a doubtful point, or through display of knowledge, or by [success in] disputation, or for superior [skill in] reading, the sages have declared to be the gains of science, and not subject to distribution." "The law is the same in regard also to artisans (Silpi), and to increase of price:" "A prize which has been offered for the display of superior learning, and a gift received from a votary for whom a sacrifice was formerly performed ; or a present from a pupil formerly instructed, sages have declared to be the acquisition of science: what is otherwise acquired. is [the] joint property [of the co-heirs]." Even what is won by surpassing another in learning, after a stake has been deposited, Brihaspati pronounces acquisition of science, and impartible. What is obtained by the boast of learning, what is received from a pupil, or for the performance of a sacrifice, Bhrigu calls the acquisition of *science*." Acquisitions through learning enumerated.

6. *Solution*, according to the Madana Ratna, means, the reading of [passages of the Vedas] having the order [of construction, krama], and the sentences [jata], and the like, duly linked together. Some, again, say it is the interpretation, in a public assembly, of concealed [meanings] required to be made known. The construction is, 'solved after a prize [has been offered].' *Display*, public exhibition. *Superior reading*, pre-eminent reading. *In regard also to artisans*, meaning, that this law, respecting science, And defined.

is to be applied also among artisans. *Increase of price* caused by great satisfaction [with the work]. *Performance of a sacrifice* is merely an example.

All such liable to partition if made with assistance from the common stock

7. Here also, in all these cases, indivisibility applies, only when no detriment has fallen on the paternal estate, in acquiring, superior knowledge, as well as wealth; for in cases of detriment [to the estate, the acquisition] is even divisible. Even so, Katyayana says: "Yet Brhaspati has ordained, that wealth shall be partible, if it was gained by learned brothers who were instructed in the family by their father, or paternal grandfather, [or uncles]; and it is the same, if the wealth were acquired by valour, [with assistance from the family estate."]

The acquirer getting a double share.

8. Also in case of loss to the paternal estate even, the acquirer gets a double share, from this text of Vasishtha: "He amongst them, who has made an acquisition, may take a double portion of it."

An exception with regard to acquisition by learning.

9. Narada states a distinction in some cases, in acquisition of wealth through learning: "He who maintains the family of a brother studying science, shall take, even though not told [asruta] a share of the wealth gained by science. The word asruta means unlearned, according to the Madana Ratna. But the proper sense is, not promised, thus: 'If will give a share.'

Distinction in wealth acquired without detriment to the paternal estate.

10. Gautama declares a distinction also, with regard to wealth acquired without detriment to the father's estate: "His own acquired wealth, a learned man may, if he please, give up to unlearned co-heirs." He who is versed in knowledge, is a *learned man*. The meaning is, that, with his own pleasure, he may give it to his unlearned brethren Katyayana: "No part of the wealth, which is gained by science, neeed be given, by a learned man, to his unlearned co-heirs; but such property must be yielded by him, to those who are equal, or superior, in learning.:" "A learned man need not give a share of his own acquired wealth, without his assent to an unlearned co-heir: provided it were not gained by him, using the paternal estate." According to Madana, this prohibition applies, only where there exists other property for those brothers who who are present: but on failure of other property, [a share of it] even must be given to them.

Gifts from the father &c., impartable, as well as acquisition by valour.

11. Brihaspati declares that to be impartible, which has been given by the father or other [person]: "That which may have been given, either by the paternal grandfather, or the father, as well as by the mother, is not to be taken back; any more than that acquired by valour, or the wealth of a wife." Narada: "Excepting what is gained by valour, the wealth of a wife, and what is acquired

by science, which are three sorts of property exempt from partition; and any favour conferred by a father." Katyayana: "That which is taken under a standard, is declared not to be subject to distribution. And also, what is seized [by a soldier] in war, after routing the forces of the enemy, and after risking his life for his lord, is named spoil taken under a standard." The same author says: "When [a soldier] performs a gallant action, despising danger; and favour is shewn to him by his lord, pleased with that action; whatever property is then received by him, shall be considered as gained by valour."

Acquisitions by valour partible, if assisted by the common stock.

12. Here Vyasa states a distinction: "The brethren participate in that wealth, which one of them gains by valour or the like, using any common property, either a vehicle [or weapon] or the like; to him, two shares should be given: but the rest should share alike.

Gift of affectionate kindred.

13. Vyasa defines the gifts of affectionate kindred, [saudayakam]. "That which is received, by a married woman or by a maiden, in the house of her husband or of her father, from her husband or from her parents, is termed the gift of affectionate kindred" Katyayana: "What is received with a damsel equal in class, at the time of accepting her [in marriage], let a man consider as wealth received with the maiden; it is deemed pure, and promotes increase [of prosperty]: But let him know that to be received on account of marriage, which is accepted by him with his bride: all such wealth is considered as vindicating the solemn rite."

Wealth received with a maiden defined.

Partition of wealth received, with a maiden governed by like rules as acquisitions by learning.

14. What is acquired in this, or a similar manner: the Arsha rite again [consists in giving his daughter] after having received a pair of kine," denominated, *wealth received with the maiden.* Here even, like wealth acquired by learning, such acquisition also is impartible, if it be acquired without detriment to the father's estate: But if gained by any other means, except learning or the other [specified modes], it is even liable to partition. And so Manu: "And if all of them, being unlearned, acquire property [before partition] by their own labour, there shall be an equal division of that property [without regard to the firstborn]; for it was not the wealth of their father: this rule is clearly settled." Labour, employment in agriculture, &c. *Not of their father*, is to be taken, as without assistance from the father's wealth.

Other things exempted from partition.

15. Other things exempt from partition, have been enumerated by Manu: "Clothes, vehicles, ornaments; prepared food, water: women; sacrifices and pious acts; as well as the common way, are declared not liable to distribution." *Vehicles*, conveyances. The *cloths*, *conveyances*,

and *ornaments*, belong respectively to the posseesor, if they are of equal value. If the value of one article be more or less than that of another, then let them be divided.

16. But the clothes, &c. and other [things] worn by the father, must be given to the person who partakes of food at his obsequies; as directed by Brihaspati: "The clothes and ornaments, the bed, and similar furniture, appertainining to the father, as well as his vehicle and the like, should be given, after perfuming them with fragrant drugs and wreaths of flowers, to the persons who partakes of the funeral repast."

Special rule for certain animals.

17. If the goats, &c. be unequal in number, a distinct mode of disposal is ordained by Manu: "Let them never divide a single goat or sheep, or a single beast with uncloven hoofs: a single goat or sheep belongs to the first born."

Explanation of the former text continued.

18. Both the *prepared food* and *water*, are to be enjoyed [by all] according to their occasions. *Women* female slaves. If they be of an odd number, they are to be distributed.

The father's women reserved.

19. However, if they were set apart by the father, they are not to be distributed, even if of an equal number, by reason of this text of Gautama: No partition is allowed, in the case of women connected [with the father or with one of the co-heirs.]"

Explanation of the terms of the Text continued.

20. According to the Kalpataru: 'By the term sacrifices and pious acts, [Yoga-kshema] holy councillors, family priests, and the like, are denoted.' But Laugakshi says: "The learned have named a conservatory act, kshema; and a sacrificial one, yoga: both are pronounced indivisible: and so the bed and the chair." In this place, a conservatory act, means [construction of] tanks, gardens, and the like. The meaning is this: Whatever property is, with consent of all whilst in a state of unity, set apart for this purpose, and kept by one individual, with that very property that act of religion shall be executed, by that same individual, and by no other: Neither shall all join for the purpose. *The common way*, the way to the house or the like, also land for a cattle pasture, and the like.

A text of Sankha and Likhita and of Vyasa, explained.

21. As for the text of Sankha and Likhita: No division of a dwelling takes place; nor of water-pots, ornaments, and things not of general use:" and the text of Vyasa: "A place of sacrifice, a field, a vehicle, dressed food, water and women are not divisible among kinsmen, though [transmitted] for a thousand generations, whereby they declare the impartible nature, both of a *dwelling* and a *field*, they have reference to a religious foundation, and land for cattle pasture, and the like; [or else] to the prohibition

of the partition by the Kshatriya or other [son of a Brahman by women of the other tribes] of thess two things obtained by the [Brahman] by acceptance or donation; because it has been already noticed as forbidden. Or [thirdly], it may refer to a partition of even these two things, when of little price, at a valuation, and not by actual division of them

22 Brihaspati declares a distinction, in regard to clothes and other matters: "They by whom it is affirmed, that clothes and the like are indivisible, have not proved that the collected wealth of opulent men, their vehicles and ornaments, shall not be divided; property held in common [would be] unemployed, for it cannot be given to one [in exclusion of another]: therefore it must be divided by [some mode deduced from] reasoning; else it would be useless. By the sale of clothes, and ornaments; on the recovery of a written debt; by compensating the dressed food with [an equal allotment of] undressed grain; an [equitable] partition is made." "Water drawn from a [single] well or pool, shall be taken by turns: Let a [single] female slave be successively employed by co-heirs in their respective houses, accordingto their several shares; if numerous, the slave shall be distributed in equal allotments: such is the law in respect of female servants. A bridge and a field shall be shared [by co-heirs] in due proportion: and the pasture ground for cattle shall be used by the co-heirs in proportion to their allotments." *On the recovery*, meaning, by levying it from the debtor. Rules for appropriating certain things of an impartible nature.

23. Katyayana: "Wealth which has been fixedly assigned for the purpose of religion, and entered in a deed; and likewse water; slaves also, and such fixed property [or a corody, nibandha] as has gone in order of descent; clothes that have been worn, and ornaments, do not resemble [divisible effects]. According to the time they have been enjoyed, even so let them be made use of [in turns] by the brothers." *Wealth*, means such has as has been set apart as the share [to be expended for] religion, and so entered in a deed. *Water*, contained in wells or the like. *Fixed property*, a means of livelihood [vritti.] *Do not resemble*, [that is, are] unfit for partition. Other articles of a like nature noticed.

24. The division of property, concealed by deceit from the other brethren, is thus explained by Yajnavalkya: "Effects, which have been withheld by one co-heir from another, and which are discovered after the separation, let them again divide in equal shares: this is a settled rule." *Effects, withheld*, whether by the eldest, younger, or other brother, among the co-heirs; for thus says Manu; "An eldest brother, who from avarice shall defraud his younger brothers, shall forfeit the honours of his primogeniture, be deprived of his [aditional] share, and be chastised by the king." Division of common property fraudulently concealed or withheld.

By any of the co-heirs whomsoever.

25. In this place, also, the term *eldest brother*, is used merely to denote the heirs generally, by the argument exemplified in the loaf and staff; and the meaning is: 'If blame attaches even to the eldest, how much more to the younger ones?' Even so Gautama: "Him indeed, who deprives an heir of his right share, he does certainly destroy; or, if he destroy not him, he dostroys his son, or else his grandson." Whenever debars, or excludes from participation, an heir, or person entitled to a share; he, being thus debarred of his share, destroys that person, who so debars him of his right: or if he do not destroy him, he destroys his son, or his grandson.

A fresh partition of it ordained.

26. Narada: "That wealth, which has been acquired by a man after separation, belongs to himself alone: what has been recovered, after being seized or lost, and the before mentioned, [property] may be afterwards [divided]." *Before mentioned*, as [property] concealed by any one, among the co-heirs. *May be afterwards*—divided; is wanting [to complete the sense] Manu: "When any common property whatever, is brought to light after partition has been effected, that is not considered a [fair] partition: it must even be made over again."

Means for ascertaining a disputed partition.

27. Yajnavalkya states the modes of decision in case of denial of partition made by any one: "When partition is denied, the fact of it may be ascertained by the evidence of kinsmen, relatives, and witnesses; and by written proof, or by house or field separately possessed." From the term, *separately possessed*, we must understand it of house or land separately given [to each,] from the connexion between the adjective, and the thing denoted by it. Narada also says: "If a question arise among co-heirs in regard to the foct of partition, it must be ascertained by the evidence of kinsmen, by the record of the distribution, or by separate transaction of affairs."

The exercise of religious duties another mode ot proof.

28. The same author says: "The religious duty of unseparated brethren is single. When partition has indeed been made, religious duties become separate for each of them." Here the term *unseparated*, is intended even to denote the condition, whilst the substantive, *brethren*, is [merely] a general term, of which the condition is so denoted. By this [reasoning,] in every unseparated family of whomsoever it may consist, father, grandfather; son, son's son; paternal uncle, brother's son or other [member], the religious duty is even single.

The performance of religious duties

29. Here again, as, in the unity of place, time, agent, and the like, one agent is by reasoning obtained for several causes, as supporting several parts of one act; so even, we may understand from the text, that there may be

distinct acts, of agents [ortherwise] unseparated. Hence all those religious acts required for performance of sacred, as well as of more common rites, even of unseparated brethren, are separate for each, in manner of the distinctions in the nature of a consecrated and a common fire, and the like, though mutually connected. Even so the Sraddha also, of the paternal uncle, brother, son, or other [dying without a son] at the Amavasya, and other [seasons], is even separate, by reason of the separation of the deified [person from the Parvana rite]: But the Sraddha &c. of brothers [dying] without [maintenance of] a sacred fire, is to be executed by one instrument [or agent] only, because all the deified persons are conjoined. In case of separation of place, by residence abroad, the Sraddhas are even separate. The [extra] acts with the fire, requisite for the rites of those who maintained a sacred fire, also, are even separate, but the worship of the household deities, the Vaisvadeva and other rites, are to be done by one agent only. Even so Sakala says: "Residing with one another dressing of food, worship of a single household deity, and moreover one single sacrifice at meals to the Visvadevas, or Manes, shew unity. In a family of divided brethren, these acts are performed in each house separately."

in a family explained.

30. As for the text of Asvalayana, as quoted in the Parijata: "Of those who reside with one dressing of food, even if [previously] separated, O my lord, one alone shall perform those four sacrifices, which follow the Vakyajna; if men of the twice-born classes, unseparated as well as separated, have their meal dressed separate, let them each celebrate these sacrifices distinct, previous to taking their food, day by day:" it has reference to persons reunited [after separation], because this conclusion is clearly ascertained, from the one phrase, "of separated persons also, residing with one dressing of food," and the other: "of separated, and unseparated [co-parceners, in the text].

Two texts of Asvalayana quoted.

31. Therefore, in case there be a separate dressing of food, among reunited [coparceners], the great sacrifices [Maha yajna. The phrase, *those which follow it*, is here the atadguna form of a Bahuvrihi compound, [not being a component part of that which it denotes]; or if it were of the other from, [being a component part], the phrase, 'the Vakyajna, and the rest,' would be void of meaning; for the ascertainment of all the four is certain, even from the fact that: In giving up the first of the five ceremonies there would be no attainment of the end. Hence, the Brahma yajna is to be even separately done. But [after all], these two texts are not respected by venerable authors.

And examined, though of doubtful authority.

The same objection applied to some texts quoted in other books

32. And these texts also, recorded in the Dharma Pravritti: "Sons unsepareted must celebrate one anniversary Sraddha for both parents: if they be in different countries, they may perform separately [it with] the Darsha [or Amavasya] and monthly Sraddhas: If they be abroad in other towns, unseparated brethren are even at all times, to celebrate the Darsha and monthly Sraddha for both parents, each separately: When unseparated, but resident in different towns, each living upon the wealth acquired by himself, those brothers should celebrate the Sraddha and Parvana, each separately," with the following one in the Smrti Samuchchaya: "The Visvadeva sacrifice, and the anniversary Sraddha, as well as the Mahalaya [or Pitra paksha] rite, are, in case the family be spread abroad, to be celebrated separately, and the Darsha Sraddha in like manner:" are by a certain author, said to have reference to reunited brethren, residing in different countries. The correct opinion however is, that these even are all unauthentic.

Conclusion drawn.

33. Or else, if there be unity of place, time, agent, and the rest, the instrumentality of one only, is found by reasoning. But where the agents are different, and the same results by the text itself; for, in a difference of place, there is a want of concurrence both of the text and reasoning too; and therefore, the separate performance of Sraddhas and other rites, by any one of them whomsoever, is founded in reason: which is my conclusion.

Other signs of partition enumerated.

34. Narada declares other signs also, of partition: "Separated but not unseparated, brethren, may reciprocally bear testimony, become sureties, bestow gifts, and accept presents." "Gift and acceptance; cattle, grain, houses, land, and attendants, must be considered as distinct among separated brethren, as also the rules of gift; income, and expenditure. Those by whom such matters are publicly transacted with their coheirs, may be known to be separate, even without written evidence." *Gift and acceptance* have reference to borrowing transactions. These very terms, 'gift and acceptance,' are repeated in the second text for the sake of clearness. Acceptance of cattle and the rest among separated persons, accomplished by each apart, is even the means of generating [sole] ownership but among unseparated brethren, acceptance by one alone is the origin of the [joint] ownership of the other also. *The rules of gift*, written deeds, and the like. *Income*, entry [or accumulation] of principal and interest, or the like. Brihaspati: "They who have their income, expenditure, and wealth distinct, and have mutual transactions of money lending, and traffic, are undoubtedly

separate ' Yajnavalkya It is declared, that brethren, husband and wife father and son, canno become sureties for each other before partition nor reciprocally lend, nor give evidence for each other

35 In default of all these signs of partition, ordeal must be resorted to; since the very same author has declared In the absence of all these a divine test is prescribed ' As for the text of Vriddha Yajnavalkya "In doubts upon the subject of partition the division must be proved by the kinsmen witnesses and written deeds proof by ordeal is not to be it has reference to the existence of other signs

In default of any marks ordeal permitted

36 In case also of total failure in ascertaining whether they were separated or united a fresh partition is enjoined by Manu When there is a doubt of partition among the co heirs a partition must be again made even though they have taken separate places of abode Narada states the duties of separated coheirs When there are many persons sprung from one man who have their [religious] duties [dharma] apart and transactions [kriya] apart and are separate in the materials of work [karma gunah] if they be not accordant in affairs should they give or sell their own shares they do all that as they please for they are masters of their own wealth *Transactions* commerce and the like worldly acts *The materials of work* household necessaries and the like as the means of performing the acts [of the householder] By the separate existence of these a partition is manifested The sense is that they so separated may [each] even without the consent of the others make the gift, sale or other alienation [of their respective shares]

A fresh partition to be made on failure of all attempts to discover the fact

37 As for the text of Vrihaspati ' Separated heirs as those who are unseparated are equal in respect of immovables; for one has not power over the whole, to give, mortgage, or sell it according to Madana, it is for putting a stop to the right among coheirs even separated as to their shares of [moveable] effects, though unseparated in other respects] to dispose, by gift or other mode without [general] consent, of grain, or the like, the produce of undivided fields, or other [fixed property] According to Vijnanesvara and others, it is for the sake of obviating any future doubt, whether they be separated or united for, by the consent of those unseparated, the facility of the transaction is ensured

A Text of Vrihaspati explained in two ways

38 The same author, with reference to one separated by his own wish, and afterwards disputing, says " If he subsequently dispute distribution, which was made with his own consent, he shall be compelled by the king to abide by his share, or be amerced if he persist in contention. *Contention*, pertinacious pursuit.

Punishment for disputing an amicable division.

SECTION VIII.

On Obstructed Heritage, or Succession,—[Sapratibandha Daya.]

Order of succession to one dying finally separated, without male issue.

1. Now, of the degrees of succession to obstructed heritage. Yajnavalkya thus relates the order of succession to the wealth of one [dying] separated, and not re-united: "The wife and the daughters also; both parents; brothers likewise, and their sons; gentiles, cognates, a pupil, and a fellow student: on failure of the first among these, the next in order is indeed heir to the estate of one, who departed for heaven leaving no male issue. This rule extends to all [persons and] classes."

First, the wife if faithful.

2. The wife, if faithful to her husband, takes his wealth; not if she be unfaithful: for it is declared by Katyayana: "Let the widow succeed to her husband's wealth, provided she be chaste." So Harita says: "If a woman becoming a widow in her youth, be headstrong, [suspected of incontinence] a maintenance must in that case be given to her, for the support of life." Prajapati: "Dying before her husband, a virtuous wife partakes of his consecrated fire; or if her husband die [before her, she shares] his wealth; this is a primeval law." *Consecrated fire*, all the [five sacred] fires. The same author says: "Having taken his movable and immovable property, the base and the precious metals, the liquids, and the clothes; let her duly offer his monthly, half-yearly, and yearly funeral repasts; with presents offered to his manes, and by pious liberality, let her honour the paternal uncle of her husband, his spiritual parents, and daughter's sons, the children of his sisters, his maternal uncles, and also ancient and unprotected persons, guests, and females, (of the family)." *Base metals*, namely, tin, lead and the like.

A text of Vrihaspaty as excepting fixed property explained away.

3. As for this text of Vrihaspati: "Whatever property a man possesses, of every kind, after division, whether mortgaged, or other, that the wife, [in whatever form married, jaya] shall enjoy after the death of her husband, with the exception of fixed property. Even if virtuous and if partition have been made, a woman is not fit to enjoy real property," it, according to the Smriti Chandrika, refers to a wife who has not [even] a daughter; for a woman having a daughter obtains the fixed property also. Madhava, again, considers it to relate to the prohibition of sale, or other transfer, of real property, by a widow, without concurrence of the heirs.

4. As for the text of Katyayana: "After the death of the husband, the widow, preserving [the honor of] the family, shall obtain the shares of her husband, so long as she lives: but she has not property [therein, to the extent of] gift, mortgage, or sale:' it is a prohibition of gift of money, or the like, to the Tandi, Charana, and the like [swindlers]. But gift for religious objects [not visible], and mortgage of the like, suitable to those objects, may even be made since fixed* and moveable property are both noticed, in the above quoted text: "Having taken," &c. [para: 2d] and from this of Katyayana himself: "A widow actively engaged in meritorious observances and fasts, constant in the duties of her widowhood, intent upon restraining [her passions], and making holy gifts, even if wanting a son, shall reach the heavenly abodes." A text of Katyayana limiting the widow's power, prohibits only improper alterations.

5. Moreover, the text of the same author "Heirless property goes to the king, deducting however a subsistence for the females, as well as the funeral charges: but the goods belonging to a venerable priest [Srotriya] let him bestow on venerable priests:" and further that of Narada: "Except the wealth of a Brahmana [property goes to the king on failure of heirs. A king, who is attentive to the obligations of duty, should give something as maintenance to the women of such persons. The law of inheritance is thus declared:" having both reference to women set apart,† because the term, 'lawful wife' [Patni], is not mentioned. Two other texts referred to kept women.

6. But as for this of Narada: "Among brothers, if any one die without issue, or enter a religious order, let the rest of the brethren divide his wealth, except the wife's separate property. Let them allow a maintenance to his women for life, provided these preserve unsullied the bed of their lord. But if they behave otherwise, the brethren may resume that allowance," it relates to the women of one dying unseparated, [or] re-unised, because the reading [of the text] is upon that very subject, according to Madana. And a third, to the widows of united or re-united persons.

7. Katyayana: "But if her husband have departed for heaven, the wife obtains food and raiment: Or [too], if unseparated, she will receive a share of the wealth, so long as she lives." The term *unseparated* is also an illustration of a reunited family. The word 'but [too]' has here the sense of 'or.' From this reslts a double object of the text, according to Madana: the last [hemistich] referring to a wife lawfully married; the first, to a women set apart.† The foundation of this exposition is to be considered. But [indeed] the same author clearly explains A text of Katyayana examined.

* Immoveable would be clearer. ED.

† Concubine shut up is the literal meaning. ED.

the real meaning 'She who is intent upon her service to her venerable Guru is fit to enjoy the share assigned: should she not perform her proper duty, he shall order her [only] clothes [already] worn and a morsel of food' *Her Guru*, her father in law, and other [venerable relatives] At his pleasure she may receive a share otherwise, merely food and raiment This is meaning

8 The same author says "But a wife, who does malicious acts injurious to her husband, who has no sense of shame, who destroys his effects or who takes delight in being faithless to his bed is held unworthy of separate property [*stridhana*] As for this text 'Let them follow this very same rule also, with females degraded [by crime] but clothes and grain are to be given to her and let her be caused to reside within* the house, it has reference to a husband [living], says a certain modern compiler This very rule, that is, regarding the divorce† of a degraded [wife]

A widow suspected of incontinence gets only a maintenance But a faithful one gets the estate If more than one they divide it

9 Even a mere maintenance is for a woman suspected of incontinence, from this text of Harita If a woman, becoming a widow in her youth, be headstrong [suspected of incontinence], a maintenance must in that case be given to her for the support of life *Headstrong* according to the Mitakshara, means 'suspected of incontinence' This establishes our argument that a lawfully married wife restrained [in her conduct] takes the wealth But if there be more than one, they will divide it, and take shares

The daughter or daughters

10 In default of the wife the daughter succeeds Even as Manu says 'The son of a man is even as himself, and the daughter is equal to the son how then can any other inherit his property, but a daughter, who is as it were himself' If there be more daughters than one, they are to divide [the estate] and take [each a share]

Unmarried before married once

11 In a case also where some of them are married, and some unmarried the unmarried ones alone [succeed] by reason of this text of Katyayana 'Let the widow succeed to her husband's estate provided she be chaste, and in default of her, the daughter inherits, if unmarried'

If married, the poorest of them

12 Among the married ones, when some are possessed of wealth, and others are destitute of any these [last] even will obtain [the estate] from this text of Gautama "A woman's property goes to her daughters unmarried, or unprovided for' *Unprovided*, destitute of wealth Those acquainted with traditional law hold, that the word, *woman's*' [wife's] includes the father's also

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* Near is more correct FD

† Casting away is more correct than divorce ED.

13 In default of daughter the daughter's son [succeeds], by the text of Vishnu "If a man leave neither son, nor son's son nor [wife, nor female] issue the daughter's son shall take his wealth For in regard to the obsequies of ancestors, daughters sons are considered as son's sons

The daughter s son

14 In default of the daughter s on comes the father in default of him, the mother even as Katyayana says "The widow being a woman of honest family, or the daughters, or on failure of them the father or the mother, or the brother, or his sons, are pronounced to be the heirs of one who leaves no male issue and likewise Vishnu "The wealth o him who leaves no male issue goes to his wife, on failure of her, it devolves on daughters in default of daughters it devolves on the daughters' sons, if there be none, it belongs to the father if he be dead, it appertains to the mother on failure of her it goes to the brothers, after them it descends to the brother's sons, if none exist, it goes to the relations [Sakulya]

The father and after him only, the mother

15 As for the opinion of Vijnanesvara 'that in the complex term parents,' the omission of one term and retention of the other [ekashesha] constitutes an exception to the regular compound [dvandva], and although the order [of construction] be not certainly defined, yet the meaning [in favour of the mother's priority] may be understood, because the word 'mother' stands first in the proper form of the compound, also, from the consecutive order of the particular compound [mother and father] being the rule, of which the omission of one term and retention of the other ['parents'] is the exception and since the father is a common parent to many sons, whilst the mother is not so, therefore, of the two, the mother in the first instance takes the estate, and on failure of her the father,' it must be set aside, as contrary to those texts for the word 'mother being placed first, in the proper form of the compound, is an exception to the general rule, in regard to the option allowed for the omission of one term and retention of the other, and further, there is a want of proof, in fixiug the proper order according to the diffusion or condensation [of the parental power] *

The doctrine of the Mitakshara disputed

16 In default of the mother, the uterine brother, in defalt of him, his son As for the declaration of Vijnanesvara and others, 'that in default of the uterine brother,' those

The uterine brother, then

* Mandlik's translation of the last passage runs thus because there is no authority (for saying that the facts) of the mother standing first in the dissolving sentence and of Ekashesha being an exception of the optional *Dvandva*, and of the commonness and the severalty of the father and mother respectively) determine the order of succession This is more correct.

his son. The doctrine of the Mitakhara in favour of the half-brothers, disputed.

by different mothers succeed; on failure of them, the sons of the uterine brother,' it is wrong: since the term 'brother' has the force of 'whole brothers,' and a secondary quality is implied by the term, brother by another mother; and hence an exposition in favour of both, is contrary [to reason].* Some however say, upon the term 'brothers:' That since: "Brothers and sisters, with sons and daughters," is one of the maxims [of Panini],† and the term 'brothers and sisters,' resolves into [the complex term] brothers,' by the omission of one term and retention of the other, in a compound of two species: therefore, in default of brothers, the sister [succeeds]." But it is not so, because there is a want of proof [of the correctness] of omitting one term, and retaining the other, in a compound of two species.

The brother's sons share with the other brothers

17. The sons of a brother, also, if themselves fatherless at the time of the paternal uncle's death, provided they are capable of understanding [the use of] property, will divide the father's share with their father's other brothers, after the example ‡: "Among grandsons by different fathers, the allotment of shares is according to the fathers."

The gentile relations, of whom, the father's mother is first, coming in this place, and not next to the mother.

18. In default, of brother's sons succeed the gentile relations, [Gotraja] within the seventh degree, being connected by funeral oblations, [Sapinda]§. The first among these is the paternal grandmother, from this text of Manu: "The mother also being dead, the father's mother shall take the heritage." Even though she is [here] mentioned immediately next to the mother, still she is to be entered at the end, after the brother's sons, after the manner of the entry for [the Sraddha of] incidental persons at the at the end, [as deceased acquaintances, &c.], because the placing her in the middle [is in violation] of the rank fixed for each, as far as brother's sons. [para. 1.]||

Then the sister.

19. In default of her, comes the sister; under this text of Manu: "To the nearest sapinda, after him in third degree, the inheritance next belongs:" and this of Vrihaspati: "Where many claim the inheritance of a childless man, whether they be paternal or maternal relations,

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* Mandik's rendering "for to take the word 'brother' as meaning uterine brother by a different mother in a secondary sense is objectionable necessitating a double interpretation of one word at one and the time" is more correct. ED

† Correct translation is 'since according to the rule' of Panini Bhratiputr swasudyhitribhyam. ED.

‡ Mandlik's reading of the passage and translation are clearly wrong. Borrodaile is right here. ED

§ The correct translation of is 'In default of the brother's son, the *Sapindas* who are Gotrajas take.' ED

|| "Because she is not placed in the fixed compact series ending with the brother's son" is more correct. ED.

[Sakulya], or more distant kinsmen [Bandhava]† he who is the nearest of them shal t[illegible] the estate" And [the next rank is] her's, both from her being begotten under the brother's family nan and there being no further reservation with respect to the gentile relationship [Gotrajatva] it does not particularly specify the same gentile kindred Neither is she mentioned in the text as the occasion of taking the wealth out of next of kin, she succeeds]‡

20 On failure of her the paternal grandfather, and half brother are both to share, inasmuch as their propinquity being equal, since the [latter person's] own father was begotten by the former of the two and was himself the begetter, of the latter as well as of the deceased The propinquity being similar and there being a want of any other notice however slight beyond the order of the text or the like, therefore in other cases also, we must act even thus For this reason in default of these two the paternal great grandfather the father's brother, and the sons of the half brother, shall take and share it

The father's father and the halfbrother share between them, after them, the paternal great grandfather the father's brother and the sons of the half brother, share alike

21 All the Sapindas and the Samanodakas follow in the order of propinquity, as enumerated by Manu "Now the relation of the Sapindas ceases with the seventh person, [or in the sixth degree of ascent or descent] and that of Samanodakas, or these connected by an equal oblation of water, ends only when their births and family names are no longer known *The seventh*, must be understood as of him passed away

The Sapindas and Samanodakas

22 If no distant kinsmen [Sakulya] exist, then come the cognate kindred (Bandhu) who are thus specified in another Smriti The sons of his own father's sister, the sons of his own mother's sister and the sons of his own mother's brother, must be considered as *his own* cognate kindred" The sons of his father's paternal aunt, the sons of his father's maternal aunt, and the sons of his father's maternal uncle must be deemed his *father's* cognate kindred The sons of his mother's paternal aunt the sons of his mother's maternal aunt, and the sons of his mother's maternal uncles, must be reckoned *his mother's* cognate kindred" Here also, the [of succession] is even the order of the text

The cognate kindred of the deceased, of his father and of his mother.

23 If on the other hand [it be said] 'As the right of the wife and all the others, in succession to the wealth, is derived from the deceased himself alone, even so that of

An argument against their equal right over-ruled.

† The exact translation [illegible] Sakulyas and Bandhavas [illegible]

‡ The correct translation [illegible] begotten in the Gotra possesses the quality [illegible] the term is unqualified The community [illegible] appertain to her but that is not mentioned as necessary for the right of succession ' Ed.

the cognate kindred is derived in like manner from him: What title then can the cognates of the father or of the mother [of the deceased] have to the wealth? The term 'sons of the sister of the father's father, and the like, is only for the sake of shewing the connexion between the name and person, and does not mean a connexion with the wealth' [I answer] Even without that text, if, after the example of 'the father's maternal uncle, his paternal uncle,' and the rest, in like manner also, the continuous application of that term [cognate among the father's and the mother's cognates be held to exist by conjunction [of kin through some intermediate person], we should have the absurdity of rendering unintelligible, the connexion between name and persons Hence, the text is intelligible only by the acceptation of paternal and maternal cognates, in considering that subject in the rules of succession to property The conclusion is, that the very same rule applies, by the declaration of the cognate affinity, in the rules for impurity and other [mutual obligations]

The preceptor, pupil

24 In default of cognate kindred, the preceptor, on failure of him, the pupil by this text of Apastamba "If there be no male issue the nearest kinsman inherits or, in default of kindred the preceptor or, failing him the disciple'

And fellow student, a Srotriya

25 In default of the pupil the fellow student is the successor in default of him, Srotriya from the text of Gautama "Venerable priests [Srotriya] should share the wealth of a Brahmana, who leaves no issue

or any Brahmana if the deceased were a Brahman

26 In default of such an one, any other Brahmana, by reason of this text of Katyayana "But in default of all those the lawful heirs are such Brahmanas, as have read the three Vedas, as are pure [in body and mind], as have subdued their passions Thus virtue is not lost" And Narada says the same "In every case, the king may take the wealth of a subject dying without an heir, except the estate of a Brahmana for the property of a Brahmana dying without an heir, must be given to Srotriyas"

In all other cases, the king

27 Vrihaspati • "If Kshatriyas Vaisyas, or Sudras, die childless, leaving neither wife nor brother, let the king take the property, for he is indeed lord of all

The heirs of hermits ascetics, and perpetual students specified

28 Yajnavalkya states a distinction with regard to the estates of ascetics, and the like "The heirs of a hermit, of an ascetic, and of a student [Brahmachari] are, in their order, the preceptor, the virtuous pupil, and the spiritual brother, and associate in holiness" *The Student*, a perpetual one, for the father and the rest even are [the natural heirs] of a temporary student *The spiritual brother*, one who has agreed to bear the appellation of 'brother.'

An associate in holiness, one appertaining to the same hermitage' 'Being a spiritual companion, and belonging to the same hermitage is a compound of nouns designating the same person, [Karmmadharaya samasa] According to Vijnanesvara, [the succession] of preceptors and the rest, is in the inverse order. But Madana prefers the direct order, from this text of Vishnu "The spiritual preceptor shall take the property of a deceased hermit."

20. The funeral rites of the deceased, as far as the tenth day's rites inclusive, must be performed by that person [among the heirs] who takes the estate, whoever it may be, [from the wife, downwards] even as far as the king himself. Even thus Vishnu says: "He who is heir to the estate, is the giver of the funeral oblations." This same matter has been fully explained by me in the Sraddha Mayukha, in determining the order of those entitled to to perform them.

Whoever takes the estate, as heir under this above order, is bound to perform the funeral rites of the deceased.

CHAPTER IX.

Of Re-union after Partition—[Samsrishta].

Re-union after separation, defined. A restriction by the Mitakshara to three persons, over-ruled.

Re-union permitted, with any former co-parcener.

1. Now we proceed to expound the doctrine of re-united coparceners. On this subject, Vrihaspati defines re-union: "He who, being once separated, dwells again, through affection, with his father, brother, or paternal uncle, is termed re-united." This re-union according to the Mitakshsra and others, can only take place with a father, brother, or paternal uncle, not with others, because no others are included in the text. But the proper sense is, that this [re-union] aries even from the joint location of the makers of the [first] partition. For the words father, and the rest, are merely as apart to denote the whole* of the persons who make the partition, after the example:† "He measures the altar, half within, and half without:" otherwise, there would be a division of the text itself [into three]. Hence, re-union may take place with a wife, a paternal grandfather, a brother's grandson, a paternal uncle's son, and the rest also. "He who, being once separated [from the co-heirs] dwells again [in common, is termed] re-united:" from joint location [of such an one], the sense of separated brothers, [one's one] sons, and the like, does not

* Illustrative would be the proper translation. Ed.

† 'Just as the term Vedi is made to mean the future site of the Vedi in the sentence' is Mandlik's translation of the passage. Ed.

result.‡ [When two settle thus]: 'The present, or future, wealth of us two, is common property until we make a partition a second time,' when there exists such a sign, either by an understanding or expressed wish, it is an union.

But the shares at a second partition must be equal. Though the contributions were unequal.

2. In this place, Manu states a distinction: "If brethren, once divided and living again together as parceners, make a second partion, the shares must in that case be equal: there is not in this instance any right of primogeniture [Jyeshtyam]." Here, some say: 'that, the unequal distribution being set aside by the phrase, the shares must in that case be equal, the prohibition of the 'eldest son's right' is repeated [though contrary to rules of composition] for the sake of making it clearly understood that although there is to be inequality in making up the share of the eldest, yet in the distribution the shares may be even unequal, when made up of greater and lesser shares, at the time of re-uniting the property.'

Still the shares at a second partition must be alike.

3. But since the term, 'eldest son's right' [Jyeshtyam] and the like, is merely a declaration of the general meaning; therefore if [the contributions to] the wealth were geater and less, still the share of each must be equal. And the same is the popular practice. Hence as the foundation of the practice is derived from this text, any supposition of a declaration contrary thereto, is at variance with reason; another author has said: "The body of the law, like Grammar, furnishes, for the most part, the foundation of popular customs."

In certain gains made even with aid from the common stock, the acquirer gets a double share

4. Vrihaspati: "If any one of the re-united brethren acquire wealth by science, valour, or the like [with the use of the joint stock], two shares of it must be given to him, and the rest shall have each a share." According to Madana, the meaning of the text is, that a double share being established for the acquirer, by the phrase, 'to the acquirer, two shares;' then, in a partition among [unseparated] brethren not re-united, he gets two shares, only in what he has acquired without detriment to the father's wealth; but in a [fresh] partition among re-united brethren, he gets two shares of what was acquired by him, even if at the detriment of the re-united property.

The order of succession to one dying after reunion, is an exception to that of

5. Yanavalkya enumerates the order of those entitled to succeed to the wealth of one re-united: "As of a re-united [coheir], the reunited [coheir], so of the uterine brother, the uterine brother," which is an exception to the regular succession [failing male issue], of "The wife, the

‡ 'According to the rule of Samanadhikarana from the above text there can be no reunion with the sons and the like of separated brothers,' is the correct translation. Ed.

daughters," and the rest. Hence this meaning results, that it is the re-united parcenership, and not the condition of the wife, [the daughter], and the rest, which causes a preponderance of the right of inheriting the property of a re-united parcener.

obstructed heritage, [Sec. 8th.]

The doctrine of the Mitakshara and others, against the wife, &c., controverted.

6. As for the doctrine of Vijnanesvara Madana, and others 'That this also refers to one devoid of son, grandson, or greatgrandson, both from the maxim that the subject forming an exception should be of a nature similar to that [of the rule] which is rejected,' and from the want of connexion between the terms of the former text : "Of one who departed for heaven leaving no male issue," and the present one : therefore even though there exist a wife, or other un-reunited near heir, of such any one dying after re-union, still, the others alone who had re-united with him, will take his estate, it must be considered. Since, [in the second case], there is a want of proof, in the connexion if the text is to be carried on even without that rule : nor [in the first case], is the complete similarity [of the rule and exception] to be looked for, in all cases of share, but only in a few points ; [as may be instanced] from the nature of a ' deceased Sapinda, where, in default of connexion between the term, ' leaving no male issue, and that of, ' one who departed for heaven, they would not find the term, ' of one deceased.' Yet it cannot be so, for that very term is found in the text of Manu, to be presently adduced [para. 13] : " be deprived of his allotment at the distribution, or should any one of them die :" But if connexion [of the terms] be allowed, we should, in the case of sons, some re-united with the father, and some not re-united, or of grandsons so situated with sons, have them sharing equally, which is a contradiction : and in the case of one having male issue, this text does not apply.

7. And here again, [such connexion] is at variance with that practice, the origin of which may be demonstrated to be in the general code of Law, para 3. But [should it be said], ' though the text be inapplicable, in the case of one having male issue, in default of such connexion ; yet if there be an assemblage of sons not re-united with brothers re-united,' or the like, then the brothers and others [re-united] would obtain the wealth, not the sons or others [not re-united], it is not so ; because in the last hemistich of the [above] text, it will be shewn to be unworthy of respect.

One part of the text explained by the other, to define the rights of the whole

8. The sense of the first quarter [of the whole text] : " Of a re-united [coheir], the re-united [coheir]," has an exception in the second quarter], of the uterine brother," with which the other is connected. The meaning therefore is, that, in a case embracing both whole and half brothers,

with half brothers, and those of a posthumous son with his uncles.

'all re-united together, only the re-united whole brother will take the wealth of the re-united brother deceased. The last hemistich is as follows : " Shall give up the share, to [a son at any time] born ; or shall retain it, if he died [without issue]:" and the sense of it is this : 'If the pregnancy of the wife of a deceased re-united coheir, be unascertained at the time of dividing the [re-united] property, and a son be afterwards born, the paternal uncle or other re-united [parcener] shall give the share to that son ; but on failure of him, he [the uncle, &c.] himself shall take it.

The son, though not re-united, succeeds, in preference even to the re-united uncle.

9. Here, the filial relation alone affords the right of taking the father's share ; not the fact of production posterior to the partition, since this cannot cause such a result besides, it creates [unnecessary] prolixity [to specify : 'subsequently' born], and [thirdly], would have the absurdity of denying the [known] right to a share, in the case of a son produced in another part of the country previous to partition, but unknown [at the time]. Therefore, to the son previously born even, though not re-united, the uncle, or other [parcener] though re-united shall give his share.

The rights of the whole and half brother severally discussed.

10. The same author propounds the right, of an uterine brother, not re-united, and a half-brother re-united, in taking shares of the wealth. " One of a different womb, if not reunited : but [a whole brother, if] reunited, obtains the property ; and not [exclusively] the son of a different mother." Here, from the terms, *one of a different womb, (son of a different mother)* the half-brother alone is not designated, but the paternal uncle and others likewise, because there is nothing to distinguish such association : for, if otherwise, we should have the absurdity of rendering senseless the union with uncles, and the rest, already established [by the text at para. 1.] And there is a want of any other acts suitable to a state of re-union.

11. *If not re-united* ; this term applies to those both preceding and following it as a lamp upon a threshhold [gives light both within and without]. So the word re-united, by varying the application of it, is to be understood of the whole brother, as entitled by union, both of the wealth, and also of the womb. The word *if* occurring in the former phrase, is to be understood immediately after this, as well as at the end of the text. The word exclusively [even, *eva*] should be supplied.

Exposition of the text.

12. The following are the meanings of the terms of this text : 'One of a different womb' that is, one of a separate womb ; [such], the wife, the father, the father's father, the half brother, the paternal uncle, and others, if

they be re re-united, may take the wealth. If not re-united, those of a different womb do not [succeed]. Hence, by reason of the rule respecting fitness and dissimilitude,* the re-union of one of a different womb, is declared as the reason for his taking the wealth. A whole brother, termed 're-united, [by union of the womb] even if not re-united [by union of the wealth], will take the property. By this reasoning, the community of womb alone even, is declared a sufficient reason. So, one re-united, as possessing union of wealth ; but if only born of a different mother, he will not take anything whatever.

13. From the above this results, that, the one from his re-union, the other from his community of womb, both jointly share and take it [between them]. Manu specially determines this very principle, in the right of succession among re-united persons. "Should the eldest, or youngest of several brothers, be deprived of his allotment at the distribution, or should any one of them die, his share shall not be lost : but the uterine brothers and sisters, and such as were re-united after a separation, shall assemble together and divide his share equally" *Be deprived of*, by entering another order, by degradation from sin, or the like *Uterine*, must be joined with brothers, in construction. *And such as were re-united*, that is, the wife, the father, the paternal grandfather, the half brother, the paternal uncle, and the rest, [para. 1].

Therefore the whole, and half brother, or any other re-united persons, share it equally.

14. On this point, Prajapati states a distinction "Whatever concealed wealth is brought to light, becomes the property of the re-united parceners : but lands and houses, those not re-united shall entirely take, according to their shares" *Concealed wealth*, what is capable of being hidden, by depositing in the ground, or otherwise, as as gold, silver, or the like. Such, those *re-united*, that is, of a different womb, shall take : but landed property, the uterine brother [takes]. Kine, horses, and other [animals], the uterine and he of a different womb [shall share]. According to Madana, he of a different womb alone, if re-united, will take the houses, horses, and the like ; but it is not so noted in the text.

Fixed property, the uterine brother takes concealed wealth and animals, he shares with those re-united.

15. According to the Smriti Chandrika : 'But if there exist only one species of the property, out of the [above sources, as] concealed wealth, land, kine, and the rest, the uterine brother alone, even not re-united, takes it. The proof of this must be considered. Among uterine brothers, if some of them are re-united, but other brothers not, nevertheless, those reunited alone will take the wealth,

A case in the Smriti chandrika explained as between uterine brothers.

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* *Anvaya* and *Vyatireka*. The first is the relation of events of which whenever one occurs, the other also occurs, the second is the connexion of circumstances of which when one occurs not the other also does not occur. Colebrooke's Digest 1st 9 Note.

because community of womb, and re union, exist as a double cause [of successian] Fven so Gautama "When a re united [parcener] dies his re united coheir shares his estate and Vrih ispati Two brothers who become re united through aflection [after being separated] share mutually'

Tl e s n succeeds l all cases Those re ted befo e others not re united

16 Here this is the refined sense 'A son whether re united with his father or not re united shall obtain the entire paternal share since the power of intercepting the right to take a share lies in the filial relation Among several sons also when one is re united and the other is not the re united one alone [succeeds] by the text [para th] Of a re united [coheir] the re united [coheir]

And the o of one reun ted su cee ls before otl er reunited per sons

17 In a case of reunion between a father son, and any other not being his son the son alone [succeeds], because the same has already been declared [para 8th], by the terms shall either give up or shall retain &c

In otl or cases the pa rents an l first of them the motl er

18 In an assemblage of father brothers paternal uncles and others not being sons re united the parents alone [take it] Of them again the mother is first, and then the father according to Madana

Then the brother pate rnal uncle &c equally

19 But [after them] the brother paternal uncle and the rest shall even take and share it [equally] for among them all the state of union exists as the cause whence their right of taking [shares] is derived

The bro thers not re united share with re un t l uncles &c

20 So likewise in an assemblage of un reunited paternal uncles half brothers and others they even share it [in common] by reason of the two phrases [the one para 10] If not re united but [a whole brother if] re united, obtains the property and not [exclusively] the son of a different mother (the other para 5) 'As of a re united [coheir] the re united [coheir] so of the uterine brotner the uterine brother

The w fe if alone re uni ted

21 In case of the re union of the wife alone, she alone takes it from the same text of a re united [coheir] the re united [coheir]

If others were reun ted the does not succeed but must be m ain tained

22 In an assemblage of the other persons reunited together with her also re un ted they alone [succeed] she does not Moreover in commencing the topic of reunion, both Sankha and Narada have declared Among brothers, if any one die without issue or enter a religious order, let the rest of the brethren divide his wealth except the wife's separate property Let them allow a maintenance to his women for life provided these preserve unsullied the bed of their lord but if they behave otherwise the brethren may resume that allowance The maintenance of the daughter of such an one, is enjoined, to be made out of her

As must the daughter who gets also a share if un initiated

father's share if still uninitiated* she will take a share [for the purpose], if [he died]† after that, her husband shall support her"

Argument to prove that the text is not confined to a case of brothers only

23 And here, like as no necessity exists for gifts in honour of the deceased at the Abhyueayeshti sacrifice, because there can be no doubt of the existence of materials for it" even so the terms *among brothers*, is not [necessarily] required, since from the very commencement, there is a certainty of the agency of reunited persons, in the shares, or like [succession], by death, or entry into a religious order

Among unreunited persons succeeding to one re united with other members of the family the mother is first then the father the eldest wife

24 As for what Sankha, in proceeding to expound reunion, says "Of those also, departed for heaven without male issue, the property goes to the brothers In default of them, both parents will take it, or the eldest wife" it, according to Madana, is intended to fix the order of the un reunited brothers, and the others, upon the death of one dying reunited subsequent to the death of his paternal uncle, brother's son, or half brother, with whom he had previously made a reunian And, according to the same authority, in this case also, first is the mother, and next the father [para 18] *The eldest* that is, she who [best] preserves her duty

The sister, and daughter, after them the nearest Sapinda

25 In default of a wife, the sister, according as Vrihaspati says His *sister* also, is entitled to take a share of it This law concerns one who leaves no issue, nor wife, nor parent Some read, his *daughter* In default [there fore] both of danghter and sister, the nearest Sapinda succeeds

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SECTION X

Of a Woman's Peculiar Property —(Stridhana)

The sources of a woman's property are six

1 Manu "What was given before the nuptial fire [Adhyagni] what was presented in the bridal procession [Adhyavahanika] what was given in token of love [Priti-datta] and what was received by her from her brother, her mother, or her father, are denominated the six fold property of a woman"

And not less but may be more

2 *Six fold*, is here used in order to prevent [itsreduction to] a smaller number, a [position] which is borne out by the word *other* in the following text of Yajnavalkya · "What

* Up to her marriage is the correct translation Ed
† 'If he died' should be omitted Ed

Others specified.

was given to a woman by the father, the mother, the husband or a brother; or received by her at the nuptial fire [Adhyagni], or presented on her supersession [adhivedanika], as also any other [separate acquisition], is denominated a woman's property." Vishnu likewise specifies more [than those six: "What has been given to a woman by her father, her mother, her son, or her brother; what has been recived by her before the nuptial fire, [Adhyagnyupagata], what has been presented to her on her husband's espousal of another wife [adhivedanika], what has been given to her by kindred, as will as her perquisite [Sulka] and a gift subsequent [Anvadheyika], are a woman's separate property."

Each gift defined: 1st, before the nuptail fire. 2d, in the bridal procession. 3d, through affection. 4th, gift subsequent. 5th, the perquisite. 6th, for supersession.

3. In explanation of property *given before the nuptial fire* [Adhyagni] and the other kinds, Katyayana says: "What is given to women at the time of their marriage, near the nuptial fire, is celebrated by the wise as woman's property bestowed before the nuptial fire [Adhyagnika]." "That again, which a woman receives whilst she is conducted from her father's house [to her husband's dwelling] is instanced as the property of a woman, under the name of gift presented in the bridal procession [Adhyavahanika]." What has been given to her through affection by her mother-in-law, or by her father-in-law; or has been offered to her as a token of respect, is denominated an affectionate present [Pritidatta]." "What has been received by a woman at time subsequent to her marrige, from the family of her husband, is called a gift subsequent [Anvadheyika], and so is that which has been similarly received from her family." Whatever is received by a woman as the value of household utensils, of beast of burden, of milch cattle, or ornaments of dress, or for works, is called her perquisite [Sulka]." The meaning is, when the bride does not [as usual] obtain household utensils and the rest, then, whatever is given to her at the time of her marriage as the price of them, is termed her perquisite. What she receives on her supersession [adhivedanika] is explained by Yajnavalkya: "To a woman, whose husband marries a second wife, let him give an equal sum [as a compensation] for the supersession, provided no separate property have been bestowed on her: but if any have been assigned, let him allot half." *Half*, here means only so much as will [when added to her own property, make it] equal to the [prescribed] amount of supersession.

Promise of dower is a debt

4. Devala: "That which a husband has promised for separate property [stridhana] must be made good by his sons, even as a debt." *Promised*, to his wife [striyai].

5. On the subject of giving property to women, Katyayana further declares: "Separate property, excepting immoveables, is to be given to women by their father, mother, husband, brother, and kindred, according to their means, as far as two thousand." The wealth to be given excludes immoveable property, and must not exceed two thousand panas, according to Madana. So Vyasa: "A present, amounting to two thousand [panas] "at the most, may be given to a woman, out of the wealth." And this sum, two thousand [panas] at the outside, is to be given every year, so that in a period of many years, more would by this [means be given]. If they are able, even immoveable property may be given, according to the same, [Madana.]

Nature and amount of a woman's separate property.

6. But in property given to a woman with a view of cheating the heirs out of it, as well as ornaments or the like, given to her merely for the purpose of wearing, a woman has no ownership [or property]; for thus says Katyayana: "But whatever has been given to women with a fraudulent design, as well as entrusted to them for use, by their father, brother, or their husband, is declared not to be women's property, [Stridhana.]"

Property fraudulently given or things lent for use not included.

7. In what they have earned by the arts, or obtained from friends or those distinct from parents or the rest, women have no property; for thus says the same author: "The wealth, which is earned by mechanical arts, or which is received through affection from any other [but the kindred], is always subject to her husband's dominion. The rest is pronounced to be the woman's property." However, though a text says: "A wife, a son, and a slave, are [in general] incapable of property [Nirdhana]: the wealth which they may earn, is [regularly] acquired for the man to whom they belong:" it also relates [only] to wealth earned by mechanical arts and the like. It is moreover agreeable to reason, to refer this also to their not having absolute dominion in wealth received on their supersession [Adhivedanika] and the rest.

Women, have no absolute property in their earnings; or in any but the first six kinds.

8. Again, though Manu says: "A woman should never make expenditure from the goods of her kindred [which are] common to [her and] many; or even from the property of her lord without his assent." (*Expenditure*, is disbursement,) yet, in some kinds of wealth, they are declared to possess sole property, by Katyayana: "That which is received by a married woman, or with a maiden, in the house of her husband, or of her father, from her brother or from her parents, is termed the gift of affectionate kindred [Saudayakam.] The independence of women, who have received such gifts, is recognised in regard to that property, for it was given by their kindred to soothe

In some kinds, they possess absolute property.

them, and for their maintenance" 'The power of women, over the gifts of their affectionate kindred is ever celebrated both in respect of donation and of sale according to their pleasure, even in the case of immoveables

But not in immoveable property given by the husband

9 But over immoveable property given them by their husbands, they do not possess full power, from this text of Narada What has been given by an affectionate husband to his wife, she may consume as she pleases, when he is dead, or may give it away, excepting immoveable property"

Husbands and others do not posess absolute power over women's property

10 The non existence of absolute power, in husbands and the rest, over women's property, is declared by the same author "Neither the husband nor the son, nor the father, nor the brothers, can assume the power over a woman's property, to take it or bestow it If any of these persons by force consume the woman's property, he shall be compelled to make it good with interest, and shall also incur a fine If such person having obtained her consent use the property amicably, he shall be required to pay the principal when he becomes rich Manu Such kinsmen as [by any pretence] appropriate the fortunes of women during their lives a just king must punish with the severity due to thieves Such *ornamental apparel*, as women wear during the life of their husbands the heirs of the husband shall not divide among themselves they who do so, are degraded from their tribe *Wear* meaning, things worn by them, which have been given to them for the, purpose by their husbands or the others Devala "Her maintenance, ornaments, perquisite and gain, are the separate property of a woman she herself exclusively enjoys it, and her husband has no right to it unless in distress" "If he let it go on a false consideration, or consume it, he must repay the value to the woman with interest, but he may use the property of his wife, to relieve a distressed son" *Maintenance* wealth given her by her father, or the others, for the purpose of subsistence *Gain* interest [or profit] *To let go*, get rid of, and give away, have all the same meaning in this place The word *son* is here used in its general sense, for [any member of] the family Yajnavalkya' 'A husband is not liable to make good the property of his wife, taken by him in a famine, or for the performance of some religious duty, or during illness, or while under restraint" Here, by using the word *husband* alone, it is virtually declared, that woman's private property must not be taken by any other but him, even when distressed by a famine or other calamity *Religious duties*, such as are indispensable. *Under restraint*, in prison

Though a husband [but none else] may take it under certain circumstances, without being compelled to restore it

11 In some cases a husband though unwilling, may be forced to restore it for, says Devala "But if the husband have a second wife and do not show honour to his first wife, he shall be compelled by force to restore her property, though amicably lent to him If suitable food, raiment, and dwelling, be withheld from the woman, she may exact her own [property] and take a share [of the estate] *with* the co heirs That is *at their hands*

A husband in some cases may be compelled to restore it

12 This however relates to a virtuous wife, for a wicked one should receive no portion, and accordingly, the same author says But a wife who does malicious acts injurious to her husband who acts improperly who destroys his effects, or who takes delight in being faithless to his bed is held unworthy of separate property And again "Wealth was conferred for the purpose of defraying sacrifices, therefore distribute wealth among honest persons, not among women, ignorant men, or such as neglect their duties

A wicked wife gets no separate property or portion

13 The right of succession after a woman's decease, to that [part of her] private property which is entitled a gift subsequent, [Anvadheya] is thus settled by Manu "What she received after marriage [Anvadheya] from the family of her husband and what her lord may have given her through affection shall be inherited even if she die in his life time, by her children [Praja]" The term *children* is thus explained by the same author 'On death of the mother, let all the uterine brothers, and the uterine sisters, equally divide the maternal estate '

The successors to a woman's property are her children

14 When, from non existence of daughters and the rest, the right of inheritance devolves even to the sons, from their connexion, then it becomes reciprocal When this right is taken up by unmarried daughters, then [the son s succession arising from] that connexion, is at end but, according to the Mitakshara it is not declared that the succession pertains [equally or] reciprocally to the brothers and unmarried sisters,' yet, it has been said by others 'It is declared, that there is no original connexion of sons and daughters, in property received by their mother after marriage [Anvadheya], or given by her husband through affection [Pritidatta] *

Argument against the reciprocal rights of the sons and the daughters

* Where there are no daughters the sons take jointly When the daughters take they also take jointly But it is not found in the text that sons and daughters take together This is the opinion of the Mitakshara others say that in the case of gift subsequent and gift out of affection the taking together of daughters and sons is an exceptional case laid down (*in the text*) This is the literal translation of this part of the passage and should be substituted for the portion from yet to affection Ed

Among daughters, the unmarried are first, sharing with sons.

If none unmarried, the married ones share with sons.

15. The distinctions in succession among daughters, are pointed out by Manu : "A woman's property goes to her children, and the daughter is a sharer with them, provided she be not given away ; but if married, she receives a mere token of respect." *Is a sharer*, shares equally with the sons. *Not given away*, unmarried. It means, that if there be one [unmarried], then the married [daughter] receives a mere token of respect, that is, only something very small. If there be no unmarried daughter, the share of the married daughter is equal to that of the brothers, according to the text of Katyayana : "Married sisters shall share with [brothers or] kinsmen."

The daughter's daughters get something.

16. Some trifle also must be given to the daughters of those daughters, according to the text of Manu : "Even to the daughters of those daughters something should be given, as may be fit, from the assets of their maternal grandmother, on the score of natural affection."

All property acquired by marriage, the daughter, and not the son takes.

17. But all acquired by marriage [Yautaka] goes to the unmarried daughter alone, not to the son. So a prior text of the same : "Property given to the mother on her marriage [Yautaka] is inherited by her [unmarried] daughter." *Property given on her marriage*, whatever is received by her at the time of marriage or other [ceremony] whilst seated together with her husband ; for, according to Madana : 'The word Yautaka, is, in the Nighantu, derived from their being then joined together [Yuta].'

All the property, except two kinds, goes to daughters, unmarried or unprovided.

18. In respect to woman's property, before enumerated in the text of other sages, distinct from that acquired subsequent to marriage [Anvadheya] or through their husband's affection [Pritidatta], these distinctions are declared by Gautama : "A woman's property goes to her daughters, unmarried or unprovided." *Unprovided*, such as are destitute of wealth.

A distinction when wives of different class exist.

19. The daughter of a Brahmani wife, however, shall take the wealth of her step-mother ; thus Manu : "The wealth of a woman, which has been in any manner given to her by her father, let the Brahmani damsel take ; or let it belong to her offspring." By giving the particle *or* the sense of '*and*,' we have it, 'and shall be shared by [her issue].' Some say, that the word Brahmani is used to denote any girl of equal or superior caste, but the proof of this must be well examined.

In default of daughters, their issue succeeds.

20. If there be no daughters, then the issue of those daughters succeeds, according to the text of Narada : "Let daughters divide their mother's wealth ; or, on failure of daughters, their male* issue [tad anvaya.]"

* Male should be omitted. Ed.

21. A distribution among daughters bv different mothers, as well as among the different daughter's sons, to be just, must be apportioned after the example of that prescribed for the sons of different fathers, where the partition is according to their father's shares [not to the number of sons of each father.]

Distribution among daughters, and among their sons, is according to mothers

22. However, Yajnavalkya says: "The daughters share the residue of their mother's property, after payment of her debts, and the issue succeeds in their default." And here again, some say, the *issue* [anvaya,] has reference to the offspring of the daughters; whilst others hold, that if she leave no daughter, even her sons may take it, since the word tad in the text of Narada above, distinctly points out the mother alone; and this [first] doctrine agrees with custom. *The residue after payment of her debts*; on this subject those acquainted with the ancient law have declared, that the sons alone must take the property, [if [only equal to, or less than, the amount of debt.

The issue of the daughters, succeeds on their default.

Sons take the property, if the debts are equal to it, or more.

23. If daughters or the rest do not exist, the sons, grandsons, and the rest must take it, for thus it is declared by Katyayana: "But on failure of daughters, the inheritance belongs to the son"

On failure of daughters and their issue sons, and their issue

24. This right of inheritance, of daughters and the rest, in the mother's property, exists only in wealth given before the nuptial fire [adhyagni,] and in the bridal procession, [adhvavahanika,] and the other [kinds] above recorded in the texts [paras. 1—2—3,] specifying woman's propety; for, if relating to all wealth in which their mother has any property, it would go to set aside those texts [limiting it to six,]

The right of the daughters and their issue, confined to the six kinds of property

25. From this we must understand, that the often repeated term 'woman's property,' which Vrihaspati, Gautama, and the rest, have adopted; for example: "A woman's property goes to her children:" [para. 15,] "A woman's property goes to her daughters," [para. 18,] and the like, relates even to the texts above delivered. As many again as, even without actually keeping the phrase, 'woman's property,' have parallel expressions, such as, 'divide the maternal estate,' [Manu, para, 13,] or the like, all those in like manner have reference to the same texts, by a combination of objects having the same origin.

The term 'woman's property' confined to the proceeding texts.

26. However, the text of Yajnavalkya: "Let sons divide equally both the effects and the debts, after [the demise of] their two parents:" relates to [what is] acquired by the act of partition and the like, with the exception

Woman's property is an exception, to the general right of sons.

of that declared in the above texts [as woman's property]* From this it it clear that, if there be daughters, the sons or other heirs even succeed to the mother's estate, distinct from that part before described [as woman's property]

On default of offspring the kinsmen succeed

27 Again, if there be no offspring of either sex, the further [succession] is declared by Yajnavalkya, referring to the abovementioned woman's property † " Her kinsmen [Bandhava] take it, if she die without issue "

Their right depends on the particular form by which the woman was married

28 The same author expounds the succession of kindred [Bandhava] to be according to the different kinds marriage " The property of a childless woman married in the form denominated Brahma, or in any of the other four [unblamed modes of marriage,] goes to her husband , but if she leave progeny, it will go to her daughters , and in other forms of marriage [as the Asura, &c] it goes to her father, and mother, on failure of her own issue "] [In the one case] if there be no husband, then the nearest to her in his [tat] own family takes it and [in the other case', if her father do not exist, the nearest to her in [her] father's family succeeds, [for the law that] " To the nearest Sapinda, the inheritance next belongs " as declared by Manu denoted that the right of inheriting her wealth, is derived even from nearness of kin to the decesed [female] under discussion—and, though the Mitakshara holds, 'that on failure of the husband, it goes to his [tat] nearest kinsmen [Sapinda] and, 'on failure of the fa her, then to his [tat] nearest Sapindas , yet, from the context it may be demonstrated, that her nearest relations are his nearest relations , and [the pronoun *tat* being used in the common gender,] it allows of our expounding the passage 'those nearest to him, through her, in his own family ' for the expressions are of similar import

The effect of there rites is different in the different classes

29 In the Brahma or in any of the other four, relates to the Brahmanical class on account of these [rites] being the only ones lawful in respect to them But as the Gandharva rite is also lawful to the Kshatriya class and the rest, so also the wealth of her who has been married according to that form devolves to her husband alone, And so Manu 'It is ordained, that the property of a woman, married by the ceremonies called Brahma Daiva, Arshá, Gandharva, or Prajapatya, shall go to her husband, if she die without issue " "But her wealth, given on the

* 'Relating to (wealth) other than technical (paribhashika) obtained on partition or by working and the like Thus all mother's wealth other than Paribhashika is taken by sons and the like even when there are daughters This is the literal translation of the latter part of the section Ed

† Paribhashika should be added Ed

marriage called Asura, or on either of the two others Paisacha and Rakshasa] is ordained, on her death without issue, to become the property of her mother and her father."

30. On failure of the husband of a deceased woman, if married according to the Brahma or other [four] forms; or of her parents, if married according to the Asura or other two forms, the heirs to the woman's property* as expounded above, are thus pointed out by Vrihaspati: "The mother's sister the maternal uncle's wife; the paternal uncle's wife; the father's sister the mother-in-law, and the wife of an elder brother, are pronounced similar to mothers. If they leave no son born in lawful wedlock, nor daughter's son, nor his son, then the sister's son and the rest shall take their property' Here must be understood, 'on failure both of the daughter, and also of her daughter, because only on failure of them does the right of inheritance pertain to the son born in wedlock, or to the daughter's son.

Heirs of a woman on failure of her husband, and parents, defined.

31. In respect of property given by the kindred [Bandhu] at an Asura marrige or the like, Katyayana says: "That which has been given to her by her kindred goes, on failure of kindred to her son."†

The son in that case inherits presents from kindred.

32. But on the subject of the perquisite, Gautame holds: "The sister's perquisite belongs to the uterine brothers; after [death of] the mother."

And the brothers get the perquisite.

33. But what Sankha says: "The lover ‡ [may take back] his nuptial present [on the death of his betrothed]," must be understood of one, dying previous to the celebration of the marriage. Here it is further remarked by Yajnavalkya: "If she die [after troth plighted], let the bridegroom take back the gifts which he had presented; paying however, the charges on both sides." The meaning is, that the husband may take back, if his bride be dead, what remains of the perquisite previously given, after calculating the expenses, incurred by himslf and by her father.

Gifts to be restored to the bridegroom.

When the bride dies before marriage, deducting charges.

34. On some points Baudhayana records a distinction: "The wealth of a deceased damsel, let the uterine brothers themselves take. On failure them, it shall belong to the mother; or if she be dead, to the father." Those skilled in the ancient law have declared, that this relates to ornaments or the like, presented by the maternal grand-

Presents by the maternal kindred, belong to the brothers of a deceased damsel.

* 'Paribhashika' should be added. Ed.

† 'Son' is incorrectly translated from an obviously wrong reading of the text. It should be husband and not son because the son takes before Bandhus in any case

‡ Bridegroom would be more correct. Ed.

father and the rest, at the time of betrothal, to a girl [who afterwards] dies before completion of the marriage. Here ends the subject of woman's property.

SECTION XI.

Of exclusion from inheritance,—(Anamsa).

Persons excluded from inheritance; must be maintained.

1. Yajnavalkya says: "An importent person, an outcast and his issue; one lame, a madman, an idiot, a blind man, and a persons afflicted with an incurable disease, as well as others [similarly disqualified], must be maintained, excluding them, however, from participation." *His issue*, means the offspring of an outcast.

but may recover their rights.

2. If, after division, virility or the other [absent qualification] be regained, by medicine or other means, the person will then receive his share, like as a son born after partition [does].

Disinherited persons enumerated.

3. Manu says: "Impotent persons and outcast; persons born blind or deaf; madmen, idiots, the dumb, and such as have lost a sense [or limb, nirindriya], are excluded from a share of the heritage." *Have lost a sense*, deprived of the nose][or smell,] or the like. Narada also declares: "An enemy to his father, an outcast, an impotent person, and one formally expelled (Apayatrita), take no shares of the inheritance, even though they be legitimate: much less if they be sons of the wife by an appointed kinsman." "One afflicted with an obstinate or an agonizing disease, an idiot; one insane, blind, or lame, must be maintained by the family, but their sons take the shares [of their parents."]

Explanation of the term 'formally expelled.'

Another result of degradation.

4. Formally expelled, one turned out by his kinsmen with the ceremony of kicking down a waterpot or the like, for high treason [Rajadroha] or a similar crime, according to Madana. It properly applies to one whe goes across the sea in a vessel or the like, to another quarter of the globe, for the sake of a livelihood; [for]: "Communion is not permitted with a Brahman [Dvija] who has passed the sea in a ship, even though he has performed penance for it;" therefore, connexion with such an one in this age of the world, is reprehended. And no form is laid down for performing the ceremony of kicking down the waterpot, or for expulsion for high treason. Sankha and Likhita: "The heritable right os him who has been

formally degraded [Apayatrita]. and his competence to offer obations of food and libations of water, are extinct."

Persons entering another order debarred from shares and sons of women married in irregular order.

5. Vasishtha: "They who have entered into another order, are debarred from shares." Here are meant the perpetual student, the hermit, and the ascetic. Katyayana "But *the son of a woman married in irregular order*, as well as he who is produced through a kinsman [Sagotra], and an apostate from a religious order, never obtain the inheritance."

Explanation of that term.

6. [Produced] *through a kinsman*, means one born of a woman married to one of her own [Sagotra] relations. *The son of a woman* married in irregular order, means, according to some, the Kshetraja, Kanina, and other sons. But, when the marriage of a younger daughter has been celebrated whilst her eldest sister is still unmarried, they are then both said to be 'out of their order;' and this is the proper application of the term [Akrama.] If he be of the same class as his father, his qualification for inheriting is declared by the same author: "But the son of a woman married in irregular order may be heir, provided he belong to the same tribe with his father: and so may the son of a man, belonging to a different [but superior] tribe, by a woman espoused in the regular gradation.

If of the same class as the father, the son may inherit.

Sons by a woman of his gher claheri not indot.s-

7. Also, if sons be begotten by a husband on a wife sprung from a higher class, they shall not take the inheritance, for thus says the same author: "The son of a woman married to a man of inferior tribe, is not heir to the estate. Food and raiment for life are considered to be due to him by his kinsmen."

A vicious son does not inherit, if other sons exist.

8. If there be other sons endowed with good qualities, the inheritance is not to be taken by a vicious one; for says Manu: "All those brothers, who are addicted to any vice, lose their right to the inheritance." Vrihaspati: "Though born of a woman equal in class, a son destitute of virtue is unworthy of the paternal wealth; it is declared to belong to those kinsmen who offer funeral oblations to the deceased, and are of virtuous conduct." "A son redeems his father from debt to superior or inferior beings: consequently there is no use for one who acts otherwise."

Persons excluded from inheritance,

9. But all those excluded from participation must be maintained during the rest of their lives, by those who get the estate, from this text of Manu: "But it is fit, that a wise man should give all of them food and raiment,

must be maintained, as long as they live.

without stint, to the best of his power: for he who gives it not, shall be deemed an outcast." (*Without stint*, signifies 'as long as they live,') as well as from the foregoing one of Yajnavalkya [para. 1 :] "Those excluded from inheritance, must still be maintained."

Except those entering another orerd, outcasts, and their sons.

10. Those who have entered into another order, and outcast, as well as their respective sons, are not to be maintained. Thus Vasishtha says: "They who have entered into another order, are debarred from shares [para. 5] : as also an impotent man, a madman, and an outcast; but let the impotent and madman (receive) a maintenance." Here, the maintenance of two only being mentioned, is meant as an indication that the others are excluded. Devala: When the father is dead an impotent man, a leper a madman, and idiot; a blind man, an outcast, and a person fraudulently wearing the token [of religious mendicity], are not competent to share the heritage: food and raiment should be given to them, excepting the outcast." *Wearing the token*, assuming a prohibited mark [linga] Baudhayana: Let the co-heirs support with food and apparel those who are incapable of business, as well as the blind, idiots, impotent persons, those afflicted with disease and calamity, and others who are incompetent to the performance of duties, excepting however the outcast and his issue." Even those degraded from the life of an ascetic, as well as their sons, are neither of them to be maintained, according to to Madana and others.

The qualified sons of a disinherited man, may inherit; with certain exceptions.

11. But the blameless sons, even, of one from these causes disinherited, shall take a share, according to the text of Vishnu: "The legitimate sons, even of these, [are sharers of the patrimony ;] but not the sons born to a degraded man after the commission of the act which caused his degradation, nor those who are procreated [on a woman of a higher class, that is] in the inverse order of the classes: their sons do not participate, even in the property left by the paternal grandfather :" and this of Yajnavalkya: "But their sons, whether legitimate, or the offspring of the wife by a kinsman, [Kshetraja] are entitled to allotments, if free from similar defects."

Special rule for their wives and daughters

12. Yajnavalkya delivers a special rule concerning the daughters and wives of these: "Their daughters must be maintained likewise, until they are provided with husband." "Their childess wives, conducting themselves aright, must be supported; but such as are unchaste, should be expelled: and so indeed should those who are perverse." If she be *unchaste* a woman must be turned out of doors, and with-

out a maintenance. A *perverse* woman also should be turned out of the doors, but a maintenance must be provided for her, according to Madana, and others.

* * * *

In the middle country famed for good actions near the auspicious confluence of the rivers Charmanvati and Yamuna stands the famous city of Bhareha (Bhara) of which Bhagavanta Deva, the worshipper of Vishnu the lotus-eyed, is the king. Thus ends Vyavahara Mayukha the ray relating to pssitive law of the book. Bhagavanta Bhaskara, *i. e*, the Sun Bhagavanta, composed, under the orders of Maharajadhiraja Bhagavanta Deva of the race of Sagara, by Bhatta Nilkantha, son of Sankara Bhatta, the son of the teacher of the world Bhatta Narayana, who was the best of all learned men and who had crossed the Sea of Mimansa and was the chief of all.

व्यवहारमयूखः ।

अथ दायनिर्णयः ।

अथ दायादिनिर्णयोपयोगि स्वत्वं ॥ तच्च क्रयप्रतिग्रहादिजन्यः शक्तिविशेषः ॥ तत्कारणता तु क्रयादीनां लोकव्यवहारादेव गम्यते न शास्त्रात् । तदनभिज्ञानामपि तद्दर्शनात् । शास्त्रकल्पनायां गौरवाच्च ॥ नयविवेके भवनाथोऽप्येवम् ॥ यत्तु गौतमः स्वामी रिक्थक्रयसंविभागपरिग्रहाधिगमेषु ब्राह्मणस्याधिकं लब्धं क्षत्रियस्य विजितं निर्विष्टं वैश्यशूद्रयोरिति तल्लोकसिद्धकारणानुवादकम् ॥ स्वामिस्वत्वध्वंसमात्रेण यत्स्वस्य भवति तस्मिन् रिक्थमिति प्रयुञ्जते लोकाः ॥ क्रयप्रतिग्रहादिव्यावर्तयितुं मात्रपदम् ॥ अत्र तादृशध्वंस एवरिक्थपदं शक्तं क्रयादिस्वत्वोपायसमभिव्याहारात् । नागृहीतविशेषणान्यायाच्च ॥ पितरि जीवति तद्द्रव्ये पुत्रादीनां पूर्वमनुत्पन्नमेव स्वत्वं संविभागेन जन्यत इति धारेश्वराचार्यः स्मृतिसंग्रहकारश्च । तन्न । उत्पत्त्यैवार्थस्वामित्वं लभन्त इत्येवमादिवचनेन पुत्रोत्पत्तेरेव पितृधने पुत्रस्वत्वनिरूपितस्वत्वोत्पादकत्वबोधनात् । भूर्या पितामहोपात्ता निबन्धो द्रव्यमेव वा । तत्र स्यात्सदृशं स्वाम्यं पितुः पुत्रस्य चोभयोरिति याज्ञवल्क्यवचनाच्च ॥ न चेदं पितामहमरणस्यैव स्वत्वोत्पत्तिहेतुत्वं गमयति न पुत्रोत्पत्तेः । मरणकालेऽनुत्पन्ने पौत्रे तदभावप्रसङ्गात् ॥ वस्तुतस्तु पितामहपदमविवक्षितम् । अन्यथा प्रपितामहाद्युपात्ते सदृशस्वाम्याभावप्रसक्तेः । अनुवाद्यविशेषणत्वाच्च ॥ यत्तु देवलः पितर्युपरते पुत्रा विभजेयुर्धनं पितुः । अस्वाम्यं हि भवेदेषां निर्दोषे पितरि स्थिते इति तत्र पूर्वार्धं तावद्विभागकालविधायकं विधिप्रत्ययश्रवणात् उत्तरार्धं तु तस्यैव स्तुत्यर्थतया स्वातन्त्र्यपरम् न तु स्वत्वाभावपरम् ॥ एतेन न जीवति पितरि पुत्रा रिक्थं विभजेरन् यद्यपि स्यात्पश्चादधिगतं तैरनर्हा एव पुत्रा अर्थधर्मयोरस्वातन्त्र्यादिति शङ्खवचो ऽपि व्याख्यातम् ॥ पूर्वनिषेधार्थवादार्थोऽनन्तरास्वातन्त्र्योक्तिरिति । यद्यपि तैः पश्चादधिगतमित्यन्वयः । तैः पुत्रैः । पश्चादुत्पत्तेः । अधिगतं प्रतिग्रहादिना प्राप्तम् । पुत्रादिप्रतिगृहीते स्वत्वाविवादात् नाप्यस्वातन्त्र्यं किमुतपितृजित इति तात्पर्यार्थः । इदं चास्वातन्त्र्यं विभागकाम्यधर्मव्यवसायादिविषयम् ॥ अत एव हारीतः । जीवति पितरि पुत्राणामर्थादानविसर्गविभागाक्षेपेष्वस्वातन्त्र्यमिति ॥ आदानविसर्गपदेन व्यवसायो लक्ष्यते । आक्षेपो दास्यादिभर्त्सनमिति मदनः ।

यत्तु मणिमुक्ताप्रवालानां सर्वस्यैव पिता प्रभुः। स्थावरस्य तु सर्वस्य न पिता न पितामह इति तत्कुटुम्बाङ्गुलीयकधारणादाविव पितुः स्वातन्त्र्यमात्रार्थं न तु दानादौ न वा पुत्रोत्पत्तेः स्वत्वकारणत्वनिवृत्त्यर्थम्॥ भोगानाश्यमप्याद्युपादानादप्येष एवार्थः प्रतीयते॥ अत एव स्थावरं द्विपदं चैव यद्यपि स्वयमर्जितम्। असंभूय सुतान्सर्वान्न दानं न च विक्रय इति दानविक्रयादीनामेव निषेधो न भोगस्य॥ अतः पूर्वमनेकभ्रात्रादीनामपरिच्छिन्नं स्वत्वं संविभागेन व्यवस्थाप्यते॥ तच्च समुदित-द्रव्यगतपूर्वस्वत्वनाशेन तदेकदेशे विलक्षणं तदुत्पद्यत इति केचित्॥ युक्तं तु पूर्वनाश-स्वत्वान्तरोत्पत्तिकल्पने गौरवात्पूर्वमेकदेशस्थितमेवोत्पन्नं विभागेन पदार्थविशेषनिष्ठतया ज्ञाप्यते॥ प्रकृतमुच्यते॥ ब्राह्मणस्याधिकं लब्धमिति प्रतिग्रहलब्धं विप्रस्याधिकं फलजनकमिति केचित्॥ रिक्थाद्यपेक्षया विप्रस्यैवायमधिक उपायः॥ एवं क्षत्रियादेर्जयादिरिति तु युक्तम्॥ जयेऽपि जितस्य यत्र गृहक्षेत्रद्व्यादौ स्वत्वमासी-त्तत्रैव जेतुरप्युत्पद्यते॥ जितस्यकरग्राहितायां तु जेतुरपि सैव न स्वत्वम्॥ अत एव सार्वभौमेन सम्पूर्णा पृथ्वी माण्डलिकेन च मण्डलं न देयमित्युक्तं षष्ठे॥ सम्पूर्ण-पृथ्वीमण्डलस्य तत्तद्ग्रामक्षेत्रादौ स्वत्वं तु तत्तद्भौमिकादीनामेव राज्ञां तु करग्रहण-मात्रम्॥ अत एवेदानीन्तनपारिभाषिकक्षेत्रदानादौ न भूदानसिद्धिः किंतु वृत्ति-कल्पनमात्रमेव॥ भौमिकेभ्यः क्रीते तु गृहक्षेत्रादौ स्वत्वमप्यस्त्येव॥ तेन तत्र भूदानस्यापि फलं भवति॥ निर्विष्टं कुसीदकृषिवाणिज्यपशुपालनलब्धं सेवालब्धं च। निर्वेशो भृतिभोगयोरित्यभिधानात्॥ भृतिः सेवा। भोगः कुसीदादिः। तत्राद्यं वैश्यस्य द्वितीयं शूद्रस्य॥ अतो लोकसिद्धैव क्रयादीनां कारणता॥ एवं च स्त्रीयगवादिजातवत्सादौ स्वत्वव्यवहारः संगच्छते॥ उपायानां शास्त्रगम्यत्वे तु न स्यात्। स्त्रीयगवादिजननरूपोपायस्य शास्त्रेणाबोधनात्॥ ननु स्त्रीयगवादिजननेनेव स्वभार्यायामुत्पत्त्या कन्यापुत्रादावपि स्वत्वं स्यात्। इष्टापत्तौ विश्वजिति सर्वस्वं ददातीति विहिते सर्वस्वदाने कन्यापुत्रादिदानापत्त्या कन्यापुत्रादि न देयमिति बाल-सिद्धान्तविरोध इति चेन्न॥ गवादाविव भार्यायां स्वत्वाभावेन तस्यामुत्पन्नेऽपत्ये तदभावात्॥ लोके च स्वत्वास्पदीभूतोत्पत्तेरेव स्वत्वकारणत्वं क्लृप्तम्॥ भार्यायामपि प्रतिग्रहेण स्वत्वं स्यादिति चेन्न॥ क्षत्रियादीनां प्रतिग्रहाभावेन तद्भार्यासु स्वत्वा-भावात्तदपत्येष्वपि तदभावः॥ तेन सजातीयेष्वयं प्रोक्तस्तनयेषु मया विधिरिति सजातीयस्यैव दत्तकस्य ग्राह्यत्वात्क्षत्रियादीन्प्रति तावद्दत्तकप्रतिग्रहो गौण एव॥ न च विप्रान्प्रति स मुख्यः संभवति। तद्विधौ युगपद्वृत्तिद्वयविरोधात्॥ न च पुत्रप्रतिग्रहविधिर्विप्राधिकारिक एव न क्षत्रियाद्यधिकारिक इति वाच्यम्। दौहित्रो

भागिनेयश्च शूद्रस्यापि च दीयत इत्यादिशौनकादिवचोभिस्तदधिकारिकत्वस्याप्यवगमात् ॥ एवं ब्राह्मविधिना क्षत्रियादिकन्यायास्तु विप्रस्योद्वाहे दानप्रतिग्रहयोर्गौणत्वमङ्गीकार्यम् । अन्यत्र मुख्यत्वमिति इति द्वयविरोधः ॥ क्षत्रियान्प्रति ब्राह्मादिविवाहप्रवृत्तिस्तु सर्वेषामविप्रतिपन्नैव ॥ अत एव पुत्रादीनां दानं गौणमिति तत्त्वरत्ने मिश्राः ॥ न च स्वा भार्यापुत्रकन्या इति शाब्दव्यवहारात्स्वत्वकल्पना । तस्य स्वः पिता स्वा मातेत्यादाविव ज्ञातिवाचकत्वेनाप्युपपत्तेः ॥ अस्ति च ज्ञातावपि स्वशब्दस्य शक्तिः । स्वो ज्ञातावात्मनि स्वं त्रिष्वात्मीये स्वोऽस्त्रियां धने इति कोशात् । यत्तु षष्ठे गर्भदासदानमुक्तं तच्चिन्त्यम् तन्मातरि मुख्यदानप्रतिग्रहक्रयविक्रयाद्यभावेन स्वत्वाभावे तदुत्पन्ने गर्भदासे सुतरां तदयोगादित्यस्तु प्रासङ्गिकम् ॥

अथ दायः ॥ असंसृष्टं विभजनीयं धनं दायः ॥ स्वामाद्यर्थसंसृष्टधनव्यावृत्त्यर्थोऽसंसृष्टमिति । वणिग्भिरेकीकृत्य विभज्यमाने दायभागशब्दाप्रयोगात् ॥ एवं वक्ष्यमाणपारिभाषिकसंसर्गवतोऽपि निवृत्तिः । अत एव स्मृतिसङ्ग्रहे । पितृद्वारागतं द्रव्यं मातृद्वारागतं च यत् । कथितं दायशब्देन तद्विभागोऽधुनोच्यत इति ॥ मिताक्षरी च । विभक्तव्यं पितृद्रव्यं दायमाहुर्मनीषिण इति ॥ पितृपदं सम्बन्धिमात्रोपलक्षणम् ॥

अयं दायो द्वेधा सप्रतिबन्धोऽप्रतिबन्धश्च । यत्र धनस्वामिनस्तत्पुत्रादेश्च जीवनं प्रतिबन्धकं स सप्रतिबन्धः । यथा पितृव्यादिधनम् ॥ यत्तु स्वामिसम्बन्धादेव पुत्रादिर्धनार्जनोपायान्तरनिरपेक्षत्वात्स्वत्वं भवति सोऽप्रतिबन्धः । यथा पितृधनम् ॥ इति दायस्वरूपम् ॥

अथ तद्विभागः ॥ तमाह नारदः । विभागोऽर्थस्य पित्र्यस्य पुत्रैर्यत्र प्रकल्प्यते । दायभाग इति प्रोक्तं तद्विवादपदं बुधैः ॥ पुत्रैरिति पौत्रादीनामुपलक्षणम् । पित्र्यस्येति पितामहादीनाम् ॥ मदनस्तु पित्र्यादेरित्येव पपाठ ॥ इदं च दायभागस्वरूपमुक्तम् ॥ द्रव्यसामान्याभावेऽपि त्वत्तोऽहं विभक्त इति व्यवस्थामात्रेणापि भवत्येव विभागः । बुद्धिविशेषमात्रमेव हि विभागः ॥ तस्यैवाभिव्यञ्जिकेयं व्यवस्था ॥

अथ विभागकालः ॥ मनुः । ऊर्ध्वं पितुश्च मातुश्च समेत्य भ्रातरः समम् । भजेरन्पैतृकं रिक्थमनीशास्ते हि जीवतोः ॥ चशब्दोपादानेऽपि मरणसमुच्चयो न विवक्षितः ॥ अत एव मदनरत्ने स्मृतिसङ्ग्रहे । पितृद्रव्यविभागः स्याज्जीवन्त्यामपि मातरि । न स्वतन्त्रतया स्वाम्यं यस्मान्मातुः पतिं विना । मातृद्रव्यविभागोऽपि तथा पितरि जीवति । सत्स्वपत्येषु यस्मात्स्त्रीधनस्य पतिः पतिः ॥ एतदपवदति

बृहस्पतिः। पित्रोरभावे भ्रातॄणां विभागः सम्प्रदर्शितः। मातुर्निवृत्ते रजसि जीवतोरपि शस्यते॥ नारदः। अत ऊर्ध्वं पितुः पुत्रा विभजेयुर्धनं समम्। मातुर्निवृत्ते रजसि प्रत्तासु भगिनीषु च॥ निवृत्ते चापि रमणे पितर्युपरतस्पृहे॥ रमणः कामः। उपरतस्पृहो विरक्तः। प्रत्तासु भगिनीषु चेति काकाक्षिवदुभयोरमण-निवृत्त्योर्विशेषणम्॥ गौतमः। ऊर्ध्वं पितुः पुत्रा रिक्थं विभजेरन् निवृत्ते रजसि मातुर्जीवति चेच्छतीति॥ इच्छतीत्यनेन रजोनिवृत्तिं विनापि पितुरिच्छया विभाग उक्तः॥

क्वचित्तदिच्छां विनापि विभागमाह बृहस्पतिः। क्रमागते गृहक्षेत्रे पितापुत्राः समांशिनः। पैतृके न विभागार्हाः सुताः पितुरनिच्छया॥ अर्थात्पितामहाद्यर्जिते तदनिच्छयापि विभागार्हा इत्यर्थः॥

पैतामहेऽपि क्वचित्पितुरिच्छयैव विभागमाहतुर्मनुविष्णू। पैतृकं तु पिता द्रव्यमनवाप्तं यदाप्नुयात्। न तत्पुत्रैर्भजेत्सार्धमकामः स्वयमर्जितम्॥ बृहस्पतिः। पैतामहं हृतं पित्रा स्वशक्त्या यदुपार्जितम्। विद्याशौर्यादिनावाप्तं तत्र स्वाम्यं पितुः स्मृतम्॥ प्रदानं स्वेच्छया कुर्याद्भोगं चैव ततो धनात्॥

नारदः। व्याधितः कुपितश्चैव विषयासक्तमानसः। अन्यथाशास्त्रकारी च न विभागे पिता प्रभुः॥ हारीतः। अकामे पितरि रिक्थभागी वृद्धे विपरीतचेतसि दीर्घरोगिणि चेति॥ अकामे विभागेच्छारहित इति मदनरत्ने। विपरीतचेता अधर्मवर्ती। पितुरनिच्छायामपि विभागो भवतीति भावः॥

पितर्यसमर्थे ज्येष्ठपुत्रानुमत्या विभागमाह हारीतः। कामं दीने प्रोषिते आर्ते गते वा ज्येष्ठोऽर्थांश्चिन्तयेदिति॥ शङ्खलिखितौ। पितर्यशक्ते कुटुम्बस्य व्यवहारं ज्येष्ठः कुर्यात्तदनन्तरो वा कार्यज्ञस्तदनुमतेनेति॥ अनन्तरोऽनुजः। कुटुम्बभरणादि-समर्थेच्छया विभागः। सर्वेषां तथात्वे त्वनियम इति निष्कृष्टोऽर्थः॥ याज्ञ-वल्क्यः। विभागं चेत्पिता कुर्यादिच्छया विभजेत्सुतान्। ज्येष्ठं वा श्रेष्ठभागेन सर्वे वा स्युः समांशिनः॥ ऐच्छिकविभाग एव विहित उत्तरार्धेन। इच्छायाः सम्भवति उक्तपक्षद्वयावलम्बनत्वे स्वातन्त्र्यायोगात्। वाक्यभेदापत्तेः। एकस्मै लक्षं कस्मैचित्कपर्दिकामन्यस्मै न किमपीत्यव्यवस्थापत्तेश्च॥

ज्येष्ठविभागे विशेषमाह मनुः। ज्येष्ठस्य विंश उद्धारः सर्वद्रव्याच्च यद्वरम्। तदर्धं मध्यमस्य स्यात्तदर्धं तु कनीयसः॥ उद्धारेऽनुद्धृते त्वेषामियं स्यादंशकल्पना। एकाधिकं हरेज्ज्येष्ठः पुत्रोऽध्यर्धं ततोऽपरः॥ अंशमंशं यवीयांस इति धर्मो व्यवस्थितः॥ यमलयोर्मध्ये प्रथमप्रसूतस्य ज्यैष्ठ्यमाह मनुः। जन्मज्येष्ठेन चाह्वानं सुब्रह्मण्यास्वपि

स्मृतम्। यमयोश्चैव संज्ञासु जन्मतो ज्येष्ठता मता॥ यस्य जातस्य यमयोः पश्यन्ति प्रथमं मुखम्। संतानः पितरश्चैव तस्मिन् ज्यैष्ठ्यं प्रतिष्ठितमिति॥ यत्तु पिण्डसिद्ध्यादिवैद्यकग्रन्थेऽनन्तरप्रसूतस्य ज्यैष्ठ्यमुक्तं तदनेन कार्यांशे बाध्यते। तस्याश्रुतिमूलत्वात्। स्नानेन शुद्धिर्भवतीतिवत्। यत्तु द्वौ यदा भवतो गर्भौ सूतिवेशविपर्ययादित्यादिना भागवते पश्चाज्जातस्य ज्यैष्ठ्यमुक्तं तदप्यनेन बाध्यते। पुराणेषु स्मृतिविरुद्धाचाराणां बहुशो दर्शनात्॥ देशाचारतो व्यवस्था संयेति केचित्॥ युक्तं तु पूर्वोक्तमेव॥ अयं चोद्धारविभागः कलौ नेष्टः। कलिवर्ज्येषु पाठात्॥ निर्णीतं चेदं समयमयूखेऽस्माभिः॥ पितुरंशद्वयमाह नारदः। द्वावंशौ प्रतिपद्येत विभजन्नात्मनः पिता। इदं त्वेकपुत्रपरम्। स यद्येकपुत्रः स्याद्द्वौ भागावात्मनः कुर्यादिति शङ्खलिखितोक्तेरिति मदनरत्ने॥ एकपदं श्रेष्ठपरम्। एके मुख्यान्यकेवला इत्यमरोक्तेः॥ गुणवत्पुत्र इति यावदिति पारिजाते॥

पितामहार्जिते त्वेकपुत्रेणापि सह समांशित्वमाह बृहस्पतिः। द्रव्ये पितामहोपात्ते स्थावरे जङ्गमे तथा। सममंशित्वमाख्यातं पितुः पुत्रस्य चैव हि॥ याज्ञवल्क्यः। भूर्या पितामहोपात्ता निबन्धो द्रव्यमेव वा। तत्र स्यात्सदृशं स्वाम्यं पितुः पुत्रस्य चोभयोः॥ कात्यायनः। सकलं द्रव्यजातं यद्भागैर्गृह्णन्ति तत्समैः। पितरो भ्रातरश्चैव विभागो धर्म्य उच्यते। यत्तु याज्ञवल्क्यः न्यूनाधिकविभक्तानां धर्म्यः पितृकृतः स्मृत इति तत्र पितृकृतो धर्म्यश्चेत्कृतो न परावर्तनीय इति मदनविज्ञानेश्वरादयः॥ यदपि नारदः पित्रैव तु विभक्ता ये समन्यूनाधिकैर्धनैः। तेषां स एव धर्मः स्यात्सर्वस्य हि पिता प्रभुरिति तद्युगान्तरपरम्॥

स्वस्य पुत्राणां च समांशपक्षे पत्न्या अप्यंशमाह याज्ञवल्क्यः। यदि कुर्यात्समानंशान्पत्न्यः कार्याः समांशिकाः। न दत्तं स्त्रीधनं यासां भर्त्रा वा श्वशुरेण वा इति॥ दत्ते त्वर्धं देयम्। दत्ते त्वर्धं प्रकल्पयेदिति वचनात्॥ अर्धं पूर्वदत्तं स्त्रीधनं यावता पुत्रांशसमं भवति तावदित्यर्थः॥ अंशाधिकधनायास्तु नांशः॥

अर्जनसमर्थस्य पुत्रस्यानीहमानस्य दायजिहृक्षाभावमाह स एव। शक्तस्यानीहमानस्य किंचिद्दत्त्वा पृथक्क्रिया॥ किंचिद्दानं च तत्पुत्राणां दायजिहृक्षानिवृत्त्यर्थमिति मिताक्षरायाम्॥

पितृमरणानन्तरं समविभाग उक्तः स्मृत्यन्तरे। विभजेरन्सुताः पित्रोरूर्ध्वं रिक्थमृणं समम्॥ हारीतः। समानो मृते पितरि रिक्थभाग इति॥

याज्ञवल्क्यः। पितुरूर्ध्वं विभजतां माताप्यंशं समं हरेत्॥ विष्णुः। मातरः पुत्रभागानुसारिभागहारिण्यः॥ स्मृत्यन्तरे। जननी त्वधना पुत्रैर्विभागेऽंशं समं

हरेत्॥ सधना तु यावता स्वधनस्य पुत्रांशसमभागता भवति तावद्दत्त्वा हरेदित्यर्थः। अंशाधिकधनायास्तु नांशः॥ सापत्न्यमातुः पितामह्याश्चांशमाह व्यासः। असुताश्च पितुः पत्न्यः समानांशाः प्रकीर्तिताः। पितामह्यश्च ताः सर्वा मातृतुल्याः प्रकीर्तिताः॥ सर्वा इत्यनेन पितामहीसपत्न्योऽपि गृह्यन्ते॥

अनेकमातृपुत्राणां विभागप्रकारमाह याज्ञवल्क्यः। अनेकपितृकाणां तु पितृतो भागकल्पना॥ एकस्यैकः पुत्रोऽपरस्य द्वावन्यस्य त्रयस्तेषां पितृसङ्ख्ययैव विभागो न विभाजकसङ्ख्ययेत्यर्थः॥ कात्यायनः। अविभक्तेऽनुजे प्रेते तत्सुतं रिक्थभागिनम्। कुर्वीत जीवनं येन लब्धं नैव पितामहात्॥ लभेतांशं स पित्र्यं तु पितृव्यात्तस्य वा सुतात्। स एवांशस्तु सर्वेषां भ्रातॄणां न्यायतो भवेत्॥ लभते तत्सुतो वापि निवृत्तिः परतो भवेत्॥ अनुजपदं ज्यायसोऽप्युपलक्षणम्। परतः प्रपौत्रात्॥ प्रपौत्रपुत्रादिः पितृपितामहप्रपितामहेषु मृतेष्वनन्तरं वृद्धप्रपितामहे मृतेऽन्यस्मिंश्च तत्पुत्रादिके जीवति तद्धनं न लभते। पुत्रपौत्रप्रपौत्रसामान्याऽभावे सोऽपि लभत एवेत्यर्थः॥ इदं च नाविभक्तपरं किंतु संसृष्टपरम्। अविभक्तविभक्तानां कुल्यानां वसतां सह। भूयो दायविभागः स्यादाचतुर्थादिति स्थितिरिति देवलोक्तेः। ऋणं लेख्यं गृहं क्षेत्रं यस्य पैतामहं भवेत्। चिरकालप्रोषितो वा भागभागागतस्तु सः॥ गोत्रसाधारणं त्यक्त्वा योऽन्यदेशं समाश्रितः। तद्वंशस्यागतस्यांशः प्रदातव्यो न संशयः॥ अविभक्तविभक्तानां वृद्धप्रपितामहतत्पुत्राणां च संसृष्टानामित्यर्थः॥ इदं च समदेशस्थितपरम्॥ देशान्तरस्थस्तु पञ्चमादिरपि लभत एव। तृतीयः पञ्चमश्चैव सप्तमश्चापि यो भवेत्। जन्मनामपरिज्ञाने लभेतांशं क्रमागतमिति देशान्तरप्रक्रमेण बृहस्पतिस्मृतेः॥

क्वचिन्मातृतो विभागमाह बृहस्पतिः। यद्येकजाता बहवः समाना जातिसंख्यया। सापत्न्यास्तैर्विभक्तव्यं मातृभागेन धर्मतः॥ व्यासः। समानजातिसंख्या ये जातास्त्वेकेन सूनवः। विभिन्नमातृकास्तेषां मातृभागः प्रशस्यते॥ एतत्प्रत्युदाहरणमाह बृहस्पतिः। सवर्णा भिन्नसंख्या ये पुंभागस्तेषु शस्यते।

विजातीयविभागमाह याज्ञवल्क्यः। चतुस्त्रिद्व्येकभागाः स्युः क्रमशो ब्राह्मणात्मजाः। क्षत्रजास्त्रिद्व्येकभागा विड्जास्तु द्व्येकभागिनः। ब्राह्मणात्मजा ब्राह्मणी क्षत्रियावैश्याशूद्रासु जाताः। क्षत्रजाः क्षत्रियावैश्याशूद्रासु जाताः। विड्जा वैश्याशूद्रयोर्जाताः॥ बृहस्पतिः। न प्रतिग्रहभूर्देया क्षत्रियादिसुताय वै। यद्यप्येषां पिता दद्यान्मृते विप्रासुतो हरेत्॥ देवलः। शूद्रां द्विजातिभिर्जातो न भूमेर्भागमर्हति। सजातावाप्नुयात्सर्वमिति धर्मो व्यवस्थितः॥ भूमेः क्रयादिप्राप्ताया

अपि। द्रव्यस्य तु लभत एव॥ अपरिणीतशूद्रापुत्रस्तु द्रव्यांशमपि न लभते॥ तथा च मनुः। ब्राह्मणक्षत्रियविशां शूद्रापुत्रो न रिक्थभाक्। यदेवास्य पिता दद्यात्तदेवास्य धनं भवेत्॥ पितृमरणोत्तरं विशेषमाह बृहस्पतिः। अनपत्यस्य शुश्रूषुर्गुणवान् शूद्रयोनिजः। लभेत जीवनं शेषं सपिण्डाः समवाप्नुयुः॥ गौतमः। शूद्रापुत्रोऽप्यनपत्यस्य शुश्रूषुश्चेल्लभते वृत्तिमूलम्॥ वृत्तिमूलं जीवनकारणम्॥ स एव। शूद्रापुत्रवत्प्रतिलोमास्विति॥ प्रतिलोमास्तु स्यादकापेक्षयोत्कृष्टवर्णस्त्रीषूत्पन्नाः॥ शूद्रेणापरिणीतायामुत्पन्ने विशेषमाह याज्ञवल्क्यः। जातोऽपि दास्यां शूद्रेण कामतोऽंशहरो भवेत्। मृते पितरि कुर्युस्तं भ्रातरस्त्वर्धभागिनम्॥ कामः पितुरिच्छा। शूद्रेणेति पदात् द्विजातिभिर्दास्यामुत्पन्नस्तु पित्रिच्छयापि नांशभाक्॥ नापि पितृमरणोत्तरमर्धं नापि पुत्राद्यभावे सर्वमिति मदनरत्नादिषु॥

विभागानन्तरोत्पन्नपुत्रे विशेषमाह गौतमः। विभक्तजः पित्र्यमेवेति॥ बृहस्पतिरपि। पुत्रैः सह विभक्तेन पित्रा यत्स्वयमर्जितम्। विभक्तजस्य तत्सर्वमनीशाः पूर्वजाः स्मृताः॥ यथा धने तथर्णे च दानाधानक्रयेषु च। परस्परमनीशास्ते मुक्त्वाशौचोदकक्रियाम्॥ ऋणमात्रसत्त्वे तु पूर्वविभक्तेभ्यो विभागग्रहणं विना तेनर्णं नैव देयम् रिक्थग्राही ऋणं दाप्य इति वक्ष्यमाणत्वात्॥ कस्मिंश्चित्संसृष्टे तु तेन सह विभागः। ऊर्ध्वं विभागाज्जातस्तु पित्र्यमेव धनं हरेत्। संसृष्टास्तेन वा ये स्युर्विभजेत स तैः सहेति मनूक्तेः॥ पितृमरणोत्तरविभागकालेऽस्पष्टगर्भायां मातरि तत्पत्न्यां भ्रातृपत्न्यां वाऽनन्तरसमुत्पन्ने विशेषमाह याज्ञवल्क्यः। विभक्तेषु सुतो जातः सवर्णायां विभागभाक्॥ विभागश्च सर्वेर्भ्रात्रादिभिः स्वस्वांशात्किंचित्किंचिदुद्धृत्य यथा स्वांशसमो भवति तथा कार्यः॥ विष्णुः। पितृविभक्ता विभागानन्तरोत्पन्नस्य विभागं दद्युः॥ इदं च तदंशेषु रैकथैकसमन्वितेषु ज्ञेयम्॥ तन्नाशे तु स एवाह। दृश्याद्वा तद्विभागः स्यादायव्ययविशोधितात्॥ दृश्याद्विद्यमानद्रव्यात्॥

भ्रातॄणां विभागकाले विशेषमाह वसिष्ठः। अथ भ्रातॄणां दायविभागो याश्चानपत्याः स्त्रियस्तासामापुत्रलाभादिति॥ प्रतीक्षा कार्येति शेषः॥

पितृमरणोत्तरं विभागे विशेषमाह बृहस्पतिः। असंस्कृता भ्रातरस्तु ये स्युस्तत्र यवीयसः। संस्कार्याः पूर्वजेनैव पैतृकान्मध्यकाद्धनात्॥ यवीयस इति तुम् दीर्घाभावश्छान्दसः। भ्रातृग्रहणं भगिनीनामुपलक्षणम्॥ तथा च स एव। असंस्कृतास्तु यास्तत्र पैतृकादेव ता धनात्। संस्कार्या भ्रातृभिर्ज्येष्ठैः कन्यकाश्च यथा विधीति॥ भगिनीसंस्कारे विशेषमाह याज्ञवल्क्यः। असंस्कृतास्तु संस्कार्या भ्रातृभिः पूर्वसंस्कृतैः। भगिन्यश्च निजादंशाद्दत्त्वांशं तु तुरीयकम्॥ यज्जातीयाः

कन्यास्तज्जातीयपुत्रस्य यावान् भागस्तस्य चतुर्थमंशं प्रत्येकं भगिनीभ्यो दत्वा ताः सत्कर्तव्या इत्यर्थः ॥

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अथ दत्तकप्रकरणम् ॥

अथ दत्तकविधिः ॥ मनुः । माता पिता वा दद्यातां यमद्भिः पुत्रमापदि । सदृशं प्रीतिसंयुक्तं स ज्ञेयो दत्त्रिमः सुतः ॥ वाशब्दान्मात्रभावे पितैव दद्यात् पित्रभावे मातैव उभयसत्त्वेषु तु उभावपीति मदनः ॥ आपद्ग्रहणादनापदि न देयः ॥ अयं निषेधो दातुरेव पुरुषार्थो न क्रत्वर्थ इति विज्ञानेश्वरः । तन्न । अस्य वाक्याददृष्टार्थतया क्रत्वर्थत्वावगमात् । कथंचिद्दृष्टार्थत्वेऽपि वा नियमादृष्टस्य आवश्यकत्वान्न तदतिक्रमे कार्यविशेषप्रयोजकादृष्टसिद्धिः ॥ कोचित्त्वापच्छब्दस्य स्वार्थत्यागाद्यापत्तेरनापत्परिसंख्यापकत्वाभावेन न निषेधार्थकत्वम् । किंत्वापदो निमित्तमात्रबोधकत्वमेव ॥ नच नैमित्तिकत्व आपदि पुत्रादाने प्रत्यवायापत्तिः । एतद्वाक्यस्य संज्ञासंज्ञिसम्बन्धमात्रबोधकत्वात् । आपदि निमित्ते दानविधायकत्वाभावात् ॥ यदपि विवाहप्रकरणे तेनैवोक्तं रोगिण्यादिनिषेधातिक्रमे दृष्टविरोध एव भार्यात्वं तूत्पद्यत एवेति तदप्यनेनैवापास्तम् ॥ 'सदृशं कुलगुणादिभिर्न जात्या । अतः क्षत्रियादिरपि विप्रादेर्दत्तको भवतीति मेधातिथिः । सदृशं जात्येति कुल्लूकभट्टः ॥ युक्तं चेदम् । याज्ञवल्क्येन औरसो धर्मपत्नीज इति द्वादशापि पुत्राननुक्रम्य सजातीयेष्वयं प्रोक्तस्तनयेषु मया विधिरित्युपसंहारात् ॥ स्पष्टीकरिष्यते चेदं वक्ष्यमाणशौनकवचोभ्याम् ॥ विज्ञानेश्वरोऽप्येवम् । ज्येष्ठेन जातमात्रेण पुत्री भवति मानव इति ज्येष्ठस्यैव पुत्रकार्यकरणे मुख्यत्वात् स न देय इत्ययमपि निषेधो दातुरेव न प्रतिग्रहीतुरित्यपि सः ॥ स्यादयं प्रतिषेधो दातुरेव यद्येतस्य ज्येष्ठदाननिषेधकता स्यात् ॥ न तु साक्षि । मानाभावात् । पुत्री भवतीत्यनेन पुत्रित्वमात्रोक्त्या ऋणापाकरणोक्तिमात्रपरत्वाच्च ॥ अत एव पितृणामनृणश्चैव स तस्मात्सर्वमर्हतीत्युत्तरार्धं संगच्छते । सर्वं द्रव्यम् ॥ दत्तकश्च पुमानेव भवति न कन्या । स ज्ञेयो दत्त्रिमः सुत इति संज्ञासंज्ञिसम्बन्धबोधकवाक्यगतेन स इति सर्वनाम्ना मातापितृकर्तृकप्रीतिगतगुणकापन्निमित्तकदानकर्मीभूतसजातीयपुंस एवाष्टवर्षं ब्राह्मणमुपनयीत तमध्यापयीतेति तच्छब्देनाष्टवर्षब्राह्मणपुंस्योपनयनादिसंस्कृतस्यैव परामर्शात् ॥ एतेनर्तुर्मम् नित्यमिति मनूक्तो दत्त्रिमशब्दो दाननिष्ठंत्तकर्मत्वाविशेषाद्दारायान्यको वा दत्तां कन्यामप्यभिधत्त इति केषांचिदुक्तिः परास्ता ॥

पुत्रप्रतिग्रहप्रकारमाह शौनकः॥ शौनकोऽहं प्रवक्ष्यामि पुत्रसङ्ग्रहमुत्तमम्। अपुत्रो मृतपुत्रो वा पुत्रार्थं समुपोष्य च॥ वाससी कुण्डले दत्त्वा उष्णीषं चाङ्गुलीयकम्। आचार्यं धर्मसंयुक्तं वैष्णवं वेदपारगम्॥ बर्हिः कुशमयं चैव पालाशं चेध्ममेव च। एतानाहृत्य बन्धूंश्च ज्ञातिमाहूय यत्नतः॥ बन्धूनन्नेन सम्भोज्य ब्राह्मणांश्च विशेषतः। अन्वाधानादि यत्तन्त्रं कृत्वाज्योत्पवनादिकम्॥ दातुः समक्षं गत्वा तु पुत्रं देहीति याचयेत्। दाने समर्थो दाताऽस्मै ये यज्ञेनेति पञ्चभिः॥ देवस्यत्वेति मन्त्रेण हस्ताभ्यां प्रतिगृह्य च॥ अङ्गादङ्गेत्यृचं जप्त्वा चाघ्राय शिशुमूर्धनि॥ वस्त्रादिभिरलङ्कृत्य पुत्रच्छायावहं सुतम्। नृत्यगीतैश्च वाद्यैश्च स्वस्तिशब्दैश्च संयुतम्॥ गृहमध्ये तमादाय चरुं हुत्वा विधानतः। यस्त्वाहृदेत्यृचा चैव तुभ्यमग्रऋचैकया॥ सोमोददित्येताभिः प्रत्यृचं पञ्चभिस्तथा। स्विष्टकृदादिहोमं च कृत्वा शेषं समापयेत्॥ ब्राह्मणानां सपिण्डेषु कर्तव्यः पुत्रसंग्रहः। तदभावेऽसपिण्डो वा अन्यत्र तु न कारयेत्॥ क्षत्रियाणां स्वजातौ वा गुरुगोत्रसमोऽपि वा। वैश्यानां वैश्यजातिषु शूद्राणां शूद्रजातिषु॥ सर्वेषामेव वर्णानां जातिष्वेव न चान्यतः। दौहित्रो भागिनेयश्च शूद्रस्यापि च दीयते॥ नैकपुत्रेण कर्तव्यं पुत्रदानं कदाचन। बहुपुत्रेण कर्तव्यं पुत्रदानं प्रयत्नतः॥ दक्षिणां गुरवे दत्त्वा यथाशक्ति द्विजोत्तमः। नृपो राष्ट्रार्धमेवापि वैश्यो वित्तशतत्रयम्॥ शूद्रः सर्वस्वमेवापि अशक्तो तद्यथाबलम्। छायावहं सङ्ग्रहम्॥ दौहित्रो भागिनेयश्चेति यथा भूतभाव्युपयोगित्वेन दण्डस्य मैत्रावरुणाय दण्डं प्रयच्छतीत्यत्र सम्भवत्यपि भाव्यत्वे चतुर्थ्यादण्डो प्रैषानन्वाहेति प्रैषानुवचनकर्तृत्वेन भाव्युपयोगिनो मैत्रावरुणस्यैव भाव्यत्वमुक्तम्॥ तथेहाप्यनपाकृतपर्णत्वेन चतुर्थ्यर्थषष्ठ्या शूद्रस्यैव दौहित्रभागिनेयावपि प्रति शेषितया भाव्यत्वम्॥ अतस्तयोरेव विधेयत्वेन दौहित्रभागिनेयावेव शूद्रस्येति नियमविधिविषयताप्युक्ता। शूद्रस्य त्वविधेयत्वेन तद्विषयत्वायोगात्। तौ शूद्रस्यैवेति वचनव्यक्तौ विप्रादिस्वन्तरपरिसंख्यापत्तेः॥ तस्माद्दौहित्रभागिनेयावेव शूद्रस्य मुख्यौ॥ तदभावेऽन्योऽपि सजातीयः। शूद्राणां शूद्रजातिष्विति तेनैवोक्तेः॥ नचेदं जातिपदं दौहित्रभागिनेययोरेवोपसंक्रियते। दौहित्रत्वभागिनेयत्वयोः सजातीयत्वस्य च परस्परव्यभिचारित्वात्। एकश्रुतौ सामान्यवाक्यवैयर्थ्यापत्तेश्च॥ विस्तृतं चैतदस्मत्तनिर्णये तातचरणैः॥ शिष्टाचारोऽप्येवम्॥ एवं च निषादस्थपतिवत्तस्याधिकारे सिद्धे यच्छुद्धिविवेक उक्तम् वैदिकमन्त्रसाध्यहोमवति पुत्रपरिग्रहे शूद्रस्यानधिकार इति तदपास्तम्॥ समन्त्रहोमस्तु तेन विप्रद्वारा कार्यः। उपवासो व्रतं होमस्तीर्थस्नानजपादिकम्। विप्रैः सम्पादितं यस्य सम्पन्नं तस्य तत्फलमिति पराशरोक्तेः आर्तहरिनाथावप्येवमेव॥ यत्तु

पराशर एव दक्षिणार्थं तु यो विप्रः शूद्रस्य जुहुयाद्धविः । ब्राह्मणस्तु भवेच्छूद्रः शूद्रस्तु ब्राह्मणो भवेदिति तत्तु शूद्रकर्मसादगुण्यं विप्रस्य दोषं प्रतिपादयतीति माधवः ॥

स्त्रिया अपि शूद्रवदेवाधिकारः । स्त्रीशूद्राश्च सधर्माण इति वाक्यात् ॥ वसिष्ठः । शुक्रशोणितसम्भवः पुरुषो मातापितृनिमित्तकस्तस्य प्रदानविक्रयपरित्यागेषु मातापितरौ प्रभवतः न त्वेकं पुत्रं दद्यात्प्रतिगृह्णीयाद्वा स हि त्रायते पूर्वेषां न तु स्त्री पुत्रं दद्यात्प्रतिगृह्णीयाद्वाऽन्यत्रानुज्ञानाद्भर्तुः पुत्रं प्रतिग्रहीष्यन्बन्धूनाहूय राजनि च निवेद्य निवेशनस्य मध्ये व्याहृतिभिर्हुत्वाऽदूरेबान्धवं सन्निकृष्टमेव गृह्णीयात् सन्देहे चोत्पन्ने दूरेबान्धवं शूद्रमिव स्थापयेत् विज्ञायते ह्येकेन बहूंस्तारयेदिति तस्मिंश्चेत्प्रतिगृहीत औरस उत्पद्येत चतुर्थभागभागी स्यादिति ॥ भर्त्रनुज्ञा तु सधवाया एव दृष्टार्थत्वात् ॥ विधवायास्तु तां विनापि पितुस्तदभावे ज्ञातीनामाज्ञया भवति ॥ अत एव रक्षेत्कन्यां पिता विन्नां पतिः पुत्रास्तु वार्धके । अभावे ज्ञातयस्तेषां न स्वातन्त्र्यं क्वचित्स्त्रियाः इति याज्ञवल्क्येन अवस्थाविशेष एव भर्तुः पारतन्त्र्यमुक्तम् ॥ तदभावे वार्धकादिना तस्याऽक्षमतायां वा पुत्रादीनामपि ॥ कात्यायनेनाऽपि नारी खल्वननुज्ञाता पित्रा भर्त्रा सुतेन वा । विफलं तद्भवेत्तस्या यत्करोत्यौर्ध्वदेहिक मित्यवस्थाविशेष एव पितृभर्त्राद्यनुज्ञोक्ता ॥ और्ध्वदेहिकं पारलौकिकम् ॥ अतो यस्यामवस्थायां भर्त्रनुज्ञा प्राप्ता सैवात्राऽनूद्यते न त्वपूर्वा विधीयते ॥ अतो विधवाया भर्त्राज्ञां विनाप्यधिकारः ॥

अदूरेबान्धवो यथायथं सन्निहितः सपिण्डः ॥ सन्निहितेष्वपि भ्रातृपुत्रो मुख्यः । भ्रातृणामेकजातानामेकश्चेत्पुत्रवान् भवेत् । सर्वे ते तेन पुत्रेण पुत्रिणो मनुरब्रवीदिति मनूक्तेरिति मिताक्षरायाम् ॥ इदमेव चैतद्वचसः प्रयोजनं युक्तम् । अन्यासम्भवात् ॥ दूरेबान्धवं विजातीयम् ॥

दत्तकस्तु परिणीत उत्पन्नपुत्रोऽपि च भवतीति तातचरणाः ॥ युक्तं चेदं बाधकाभावात् ॥ यत्तु कालिकापुराणे पितुर्गोत्रेण यः पुत्रः संस्कृतः पृथिवीपते । आचूडान्तं न पुत्रः स पुत्रतां याति चान्यतः ॥ चूडोपनयनसंस्कारा निजगोत्रेण वै कृताः । दत्ताद्यास्तनयास्ते स्युरन्यथा दास उच्यते ॥ ऊर्ध्वं तु पञ्चमाद्वर्षान्न दत्ताद्याः सुता नृप । गृहीत्वा पञ्चवर्षीयं पुत्रेष्टिं प्रथमं चरेदिति तदसगोत्रपरम् ॥ आचूडान्तमित्याङभिव्याप्त्यर्थः । मर्यादार्थत्वे चूडोपनयनसंस्कारा इत्यनेन विरोधापत्तेः ॥ इदं तु वचो न तथा विस्रम्भणीयम् छिन्नकालिकापुराणपुस्तकेष्वदर्शनात् ॥

अयं च दत्तको द्विविधः ॥ केवलो द्व्यामुष्यायणश्च ॥ संविदं विना दत्त आद्यः ॥ आवयोरसाविति संविदा दत्तस्त्वन्त्यः ॥ तत्राद्यः प्रतिग्रहीतुरेवौर्ध्वदेहिकश्राद्धादि कुर्यात् । तथाहि पुत्रप्रतिग्रहस्य भाव्याकाङ्क्षायां पुत्रं प्रतिगृह्णीयादित्यादिभिः तद्विधौ

पुत्रमिति द्वितीयान्तेन पुत्रस्य भाव्यत्वमुक्तम्॥ न च जन्यपुंस्त्वाख्यं पुत्रत्वं भावयितुं शक्यम्॥ तेन पुत्रशब्देन सर्वं पुत्रकार्यं लक्षयित्वा तत्प्रयोजकमदृष्टं भाव्यमङ्गीकर्त्तव्यम्॥ अतः प्रतिग्रहीतृकुले पुत्रपित्रादिसम्बन्धविशेषप्रयुक्तानि कार्याणि प्रवर्त्तन्ते॥ अत एवाह मनुः। गोत्ररिक्थे जनयितुर्न भजेद्दत्त्रिमः सुतः। गोत्ररिक्थानुगः पिण्डो व्यपैति ददतः स्वधा॥ गोत्ररिक्थेऽनुगच्छतीति गोत्ररिक्थानुगः प्रायस्तत्सम-नियत इति यावत्। दत्त्रिमः केवलः। द्व्यामुष्यायणे गोत्राद्यनुवृत्तेर्वक्ष्यमाणत्वात्॥ पिण्डः श्राद्धमौर्ध्वदैहिकादीति मेधातिथिकुल्लूकभट्टादयः॥ पिण्डः सापिण्ड्यम् स्वधौर्ध्वदैहिकश्राद्धादीत्यपरे॥ वस्तुतस्तु यथा जातपुत्रः कृष्णकेशोऽग्नीनादधीतेत्यत्र वयोऽवस्थाविशेषः यथा वार्धमन्तर्वेदिमिनोत्यर्धं बहिर्वेदीत्यनेन देशविशेषो लक्ष्यते तथात्र गोत्ररिक्थपिण्डस्वधापदैर्जनकादीनां पिण्डसम्बन्धप्रयुक्तं कार्यमात्रं लक्षयित्वा तन्निवृत्तिरुच्यते॥ तेन सोदरपितृव्यादिसम्बन्धनिवृत्तिरपि सिद्धा भवति॥ अत एव केवलदत्तकजन्यः पुत्रोऽपि पितुः सपिण्डीकरणपार्वणश्राद्धादि प्रतिग्रहीत्रैव सह कुर्यात्॥ एवं तत्पुत्रोऽपि॥ यत्तु अथ चेद्दत्तकक्रीतपुत्रिकापुत्राः परपरिग्रहेणार्षेयास्ते द्व्यामुष्यायणा भवन्तीत्यादिना द्व्यामुष्यायणानुपक्रम्य कात्यायनः अथ यद्येषां स्यात्तु भार्यास्वपत्यं न स्याद्रिक्थं हरेयुः पिण्डं चैभ्यस्त्रिपुरुषं दद्युरथ यद्युभयोर्न स्यादुभाभ्यां दद्युरेकस्मिन् श्राद्धे पृथगुद्दिश्य द्वावनुकीर्त्तयेत् प्रतिग्रहीतारं चोत्पादयितारं चातृतीयात्पुरुषादिति तद्द्व्यामुष्यायणपरम्। द्व्यामुष्यायणा भवन्तीत्युपक्रमात्॥ तेन द्व्यामुष्यायणो जनकस्य प्रतिग्रहीतुर्वा पुत्रान्तरासत्त्वे तस्मै पिण्डं दद्यात् रिक्थं च गृह्णीयात्। न तत्सत्त्वे॥ यदातूभयोरप्यौरसाः पुत्राः सन्ति तदा कस्मा अपि न दद्यात् प्रतिग्रहीत्रौरसांशस्य चतुर्थं भागं च हरेत्। तस्मिंश्चेत्प्रतिगृहीते औरस उत्पद्येत चतुर्थभागभागी स्यादिति वसिष्ठोक्तेः। उत्पन्ने त्वौरसे पुत्रे चतुर्थांशहराः सुताः। सवर्णा असवर्णास्तु ग्रासाच्छादनभाजना इति कात्यायनोक्तेश्च॥ तृतीयांशहरा इति कल्पतरौ पाठः। सवर्णाः क्षेत्रजदत्तकादय इति विज्ञानेश्वरः॥ यदा तूभयोः पुत्राभावस्तदैकस्मिन् श्राद्ध इत्याद्युक्तप्रकारेणोभयोरप्येकमेव श्राद्धं कुर्यात्॥ यदपि हेमाद्रौ कार्ष्णाजिनिः यावन्तः पितृवर्गाः स्युस्तावद्भिर्दत्तकादयः। प्रेतानां योजनं कुर्युः स्वकीयैः पितृभिः सह॥ द्वाभ्यां सहाथ तत्पुत्राः पौत्रास्त्वेकेन तत्समम्। चतुर्थे पुरुषे छन्दस्तस्मादेषां निपीडणे॥ साधारणेषु कालेषु विशेषो नास्ति वर्गिणाम्। मृताहे त्वेकमुद्दिश्य कुर्युः श्राद्धं यथाविधीति तदपि कात्यायनीयसमानार्थमेव॥

अयमर्थः द्व्यामुष्यायणदत्तकादयो जनकप्रतिग्रहीत्रोः कुले मृतानां स्ववर्गैस्तत्पित्रादिभिः सह सपिण्डीकरणं कुर्युः दत्तकादिपुत्रास्तु तेषां जनकप्रतिग्रहीतृभ्यां सह कुर्युः

तत्पौत्रा अपि स्वपितरं दत्तकेन पितामहेन तज्जनकेन प्रपितामहेन । चतुर्थे पुरुषे तत्प्रपौत्रे छन्दः इच्छा प्रतिग्रहीतारमुच्चारयेन्नवेति जनकं तूच्चारयेदेव साधारणेषु मातामह्यादिकालेषु जनकप्रतिग्रहीतृवर्गिणां श्राद्धं कार्यम् मृताहे त्वेकमेवोद्दिश्यैकोद्दिष्टं श्राद्धं कुर्यादिति ॥ केचित्तु केवलदत्तकस्याविधानात्तु नामुष्य च आवयोरयमिति संविदश्च विधानाभावात्तां विना गृहीतोऽपि द्व्यामुष्यायण एव तेनैव च जनकप्रतिग्रहीत्रोरुद्देशेनामावास्यादिषु श्राद्धद्वयमेकं वा श्राद्धं कार्यम् । तत्पुत्रेण तु दत्तकस्य तज्जनकप्रतिग्रहीतृभ्यां ताभ्यामपि सह सपिण्डीकरणपार्वणश्राद्धादि कार्यम् । एवं तत्पुत्रादिभिरपीत्याहुः तच्चिन्त्यम् ॥ यद्यपि केवलदत्तकः क्वापि शब्दतो नोक्तस्तथापि पूर्वोक्तमनुवचनेन जनकादीनां सम्बन्धमात्रनिवृत्तेरुक्तत्वात् द्व्यामुष्यायणं तदभावादर्थात्सिद्ध्यत्येव ॥ किंच । ऊर्ध्वं सप्तमात्पितृबन्धुभ्यो बीजिनश्च मातृबन्धुभ्यः पञ्चमादिति गौतमीयेन बीजिकुले सप्तपुरुषं यावद्विवाहो निषिद्धः स द्व्यामुष्यायणे व्यर्थः स्यात् । तस्मिन्सापिण्ड्यसत्त्वात् ॥ अतोऽवश्यमेतत्सार्थक्यार्थं केवलदत्तको वाच्यः । तत्र सापिण्ड्यनिवृत्तेरुक्तत्वात् ॥ अपि च प्रवराध्याये । द्व्यामुष्यायणका ये स्युर्दत्तकक्रीतकादयः । गोत्रद्वयेऽप्यनुद्वाह्यः शौङ्गशैशिरयोर्यथेति ॥ एतेन गोत्रद्वयं द्व्यामुष्यायणस्योक्तम् । मानवीयेन च जनकगोत्रनिवृत्तिरुक्तेति विरोधः केवलद्व्यामुष्यायणभेदेनैव परिहरणीयः ॥ तेन सिद्ध्यत्येव केवलोऽपि दत्तकः ॥ अत एव शूरेण कुन्तिभोजाय दत्त्रिमत्वेन दत्तायाः कुन्त्याः सुतस्यार्जुनस्य शूरपुत्रवसुदेवदुहितुः सुभद्रायाः सापिण्ड्यनिवृत्तिं मनुवचनेनोक्त्वाऽस्य गौतमीयस्य बीजसन्तानजाया अपि निषेधमात्रपरत्वमेव चोक्त्वाऽर्जुनेन न सा सुभद्रा परिणेयेत्याशङ्क्य वार्त्तिकोक्तं सम्बन्धव्यवधानकल्पनाख्यं समाधानमाह भट्टसोमेश्वरः ॥ यत्तु कश्चित्सोमेश्वरेण गौतमवचनात्कुन्त्याः शूरकुलेऽपि साप्तपौरुषं सापिण्ड्यमुक्तमित्याह तद्ग्रन्थानध्ययननिबन्धनम् ॥ तेन हि सापिण्ड्यनिवृत्तिं पूर्वमुक्त्वा गौतमीयस्य जनककुले निषेधपरत्वमुक्तम् न तु सापिण्ड्यबोधकत्वम् ॥ एवं सिद्धे केवले द्व्यामुष्यायणे चावयोरसाविति संविदपि सिध्यति । प्रतिग्रहीतुर्द्व्यामुष्यायणज्ञानार्थत्वेन दृष्टार्थत्वात् ॥ अत्र च केवलदत्तकस्य पालकपितृकुले साप्तपौरुषं मातृकुले च पाञ्चपौरुषं सापिण्ड्यम् । यत्तु वृद्धगौतमः स्वगोत्रेण कृता ये स्युर्दत्तक्रीतादयः सुताः । विधिना गोत्रमायान्ति न सापिण्ड्यं विधीयते ॥ यच्च बृहन्मनुः दत्तक्रीतादिपुत्राणां बीजवप्तुः सपिण्डता । पञ्चमी सप्तमी चैव गोत्रित्वं पालकस्य च । यदपि नारदः धर्मार्थं वर्धिताः पुत्रास्तस्मान्नीतेषु पुत्रवत् । अंशपिण्डविभागित्वं तेषु केवलमिष्यत इति तान्यनाकरं ॥ साऽऽकरत्वेऽपि द्व्यामुष्यायणस्य प्रतिग्रहीतृकुले साप्तपौरुषसापिण्ड्याभावप्रतिपादनार्थम् ।

केवलदत्तके पूर्वोक्तगौतमीयेन पालककुले साप्तपौरुषसापिण्ड्यस्योक्तत्वात्। मानवीयेन च जनककुले सापिण्ड्यनिवृत्तेरुक्तत्वात्॥ यत्तु सापिण्ड्यनिर्णये केषांचिन्मान्यानां लेख: जनकगोत्रेणोपनयनादिसंस्कृतस्य तु जनककुले पितृतो मातृतश्च पाञ्चपौरुषं साप्तपौरुषं च सापिण्ड्यम्। प्रतिग्रहीतु: कुले त्रिपुरुषं प्रतिग्रहीतरि पितृत्वप्रयोजक-स्योत्पादकत्वस्योपनेतृत्वस्य चाभावात्॥ प्रतिग्रहीतृगोत्रेण संस्कृतस्य तु प्रतिग्रहीत्रा-दिभिरेव साप्तपौरुषं पाञ्चपौरुषं चेति तस्य मूलं न विद्म:॥ किञ्च। यदि प्रतिग्रहीतुरुत्पादकत्वोपनेतृत्वाद्यभावान्न पितृत्वं कथं तर्हि त्रिपुरुषं सापिण्ड्यं प्रतिग्रहीत्रादिश्राद्धादिकर्तृत्वं वा दत्तकस्य॥ न च पितृत्वं सापिण्ड्यसमनियतं येन तदभावात्सापिण्ड्याभाव: स्यात्॥ वस्तुतस्तु ऊर्ध्वं सप्तमात्पितृबन्धुभ्य इति गौतमादिवचनै: प्रतिग्रहीत्रादिभि: सह सापिण्ड्यं पूर्वमुक्तमेवेति दिक्॥

अथ पुत्रदानप्रतिग्रहविधि:॥ तत्रानेकपुत्राणामज्येष्ठदान एवाधिकार: सर्व्वेषाम्। प्रतिग्रहे त्वजातपुत्राणां मृतपुत्राणां वा। स्त्रीणां सधवानां भर्तुरनुज्ञया भर्त्रभावे पित्रादीनाम्॥ शूद्राणां दौहित्रो भागिनेयो वा ग्राह्यो नान्य:॥ अन्यैस्तु सन्निहित: सपिण्ड: तदभावे विप्रकृष्टो न त्वन्यजातीय इति॥ अत्र दाता प्रतिग्रहदिने कालादि स्मृत्वा ऽस्मदादीनामस्य च पुत्रस्य वर्तमानपितृपुत्रादितत्तत्सम्बन्धनिमित्तकतत्तत्-कार्यनिवृत्तये प्रतिग्रहीत्रादिनामस्य च परस्परं पितृपुत्रादितत्तत्सम्बन्धनिमित्तकतत्तत्-कार्यप्रवृत्तये च पुत्रदानं करिष्य इति सङ्कल्प्य गणेशपूजास्वस्तिवाचनमातृकापूजावृद्धि-श्राद्धादि कुर्यात्॥ प्रतिग्रहीता तु प्रतिग्रहदिनपूर्वदिन उपोष्यापरदिने बन्धूनाहूय पुत्रप्रतिग्रहं राज्ञे निवेद्य कालादि स्मृत्वा ग्रहीष्यमाणपुत्रस्य तज्जनकादीनां च परस्परं वर्तमानपितृपुत्रादितत्तत्सम्बन्धनिवृत्तये ऽस्मदादीनां च परस्परं पितृपुत्रादितत्तत्-सम्बन्धनिमित्तकतत्तत्कार्यप्रवृत्तये च पुत्रं प्रतिग्रहीष्य इति सङ्कल्प्य गणेशपूजास्वस्ति-वाचनमातृकापूजावृद्धिश्राद्धाचार्यवरणकुण्डलाङ्गुलीयकवासोयुगलोष्णीषमधुपर्काद्याचार्य पूजनानि सङ्कल्पपूर्वकं कृत्वा श्रोत्रियान्बन्धूंश्च भोजयेत्॥ अथ आचार्य: स्वकर्म करिष्य इति सङ्कल्प्य स्थण्डिलोल्लेखनाद्यग्निप्रतिष्ठापनान्तं कृत्वाऽन्वाधाने चक्षुषी आज्येनेत्यन्तमुक्त्वाऽत्रप्रधानमग्निं वायुं सूर्यं प्रजापतिं चैकैकयाहुत्या ऽग्निमेकया सूर्या-सावित्रौ च षड्भिस्त्वाहुतिभिर्यक्ष्ये शेषेण स्विष्टकृतमित्याद्याज्योत्पवनान्तं कुर्यात्। अथ प्रतिग्रहीता दातृनिकटे गत्वा पुत्रं देहीति याचयेत्॥ दाता तु यं यज्ञेनेति ऋक्पञ्चकमुक्त्वा कालादि स्मृत्वा ऽस्मदादीनामित्यादि प्रवृत्तय इत्यन्तमुक्त्वाऽमुं पुत्रं यथाशक्त्यलङ्कृतं तुभ्यमहं संप्रददे इति वदेत्॥ येयज्ञेनेति पञ्चानां मानवपुत्रो नाभाने-दिष्ठो विश्वेदेवा जगती पुत्रदाने विनियोग:॥ प्रतिग्रहीता तु देवस्यत्वेत्यनेन प्रतिगृह्य

स्वशाखोक्तां कामस्तुतिं पठित्वाऽङ्गादङ्गादित्यृचं जपित्वा पुत्रं मूर्धन्याघ्राय वस्त्रादिभिरलङ्कृत्य मङ्गलशब्दैर्गृहान्तर्नयेत् ॥ अथाचार्य आज्यस्थापनाद्याज्यभागान्तं कृत्वाज्येनैव व्यस्तसमस्तव्याहृतिभिर्हुत्वा चरुणा जुहुयात् ॥ यस्त्वाहृदावस्तुमुतोऽग्निस्त्रिष्टुप् पुत्रप्रतिग्रहप्रधानचरुहोमे विनियोगः ॥ यस्त्वाहृदा० अग्नय इदं नममेति त्यागः ॥ तुभ्यमग्र इत्यस्य सूर्यासावित्री सूर्यासावित्र्यनुष्टुप् ॥ विनियोगः प्राग्वत् । सोमोददत् ततः स्विष्टकृदादि समापयेदिति विधिः ॥

प्रकृतमनुसराम: ॥ ऋणविभागे विशेषमाह कात्यायनः । पित्र्यं पित्रर्णसम्बन्धमात्मीयं चात्मना कृतम् । ऋणमेवं कृतं शोध्यं विभागे बन्धुभिः सह ॥ पित्रर्णसम्बन्धं पितुरृणापाकरणार्थं कृतम् । आत्मीयं स्वकुटुम्बभरणाद्यर्थमन्येन कृतम् ॥ स एव । भ्रात्रा पितृव्यमातृभ्यां कुटुम्बार्थमृणं कृतम् । विभागकाले देयं तद्रिक्थिभिः सर्वमेव तु ॥ रिक्थादन्यर्णविषयेऽपि स एव ॥ ऋणं प्रीतिप्रदत्तं तु दत्त्वा शेषं विभाजयेत् ॥ प्रदत्तं प्रतिश्रुतम् ॥ नारदः । यत्किञ्चित् पितृदायेभ्यो दत्त्वर्णं पैतृकं च यत् । भ्रातृभिस्तद्विभक्तव्यमृणी स्यादन्यथा पिता ॥ पितृदायः पित्रा प्रतिश्रुतम् ॥ स एव । धर्मार्थं प्रीतिदत्तं च यदृणं स्वेन योजितम् । तद्दृश्यमानं विभजेन्न दानं पैतृकाद्धनात् ॥ धर्मार्थं प्रीत्या च यद्दत्तं दातुं प्रतिश्रुतम् । पित्रा स्वेन योजितं स्वयं कृतम् । तदृणं दृश्यमानं च द्रव्यं विभजेत् ॥ एतदृणातिरिक्तस्य पैतृकाद्धनाद्दानं नास्तीत्यर्थः ॥ अदृश्यमानशङ्कायामपि स एव ॥ दृश्यमानं विभज्येत गृहक्षेत्रं चतुष्पदम् । गूढद्रव्याभिशङ्कायां प्रत्ययस्तत्र कीर्तितः ॥ गृहोपस्करवाह्याश्च दोह्याभरणकर्मिणः ॥ दृश्यमाना विभज्यन्ते कोशं गूढेऽब्रवीन्मनुः ॥ कर्मिणो दासाद्याः । अत एव दिव्यप्रकरणेऽस्मिन्विषये कोश एव नियमितस्तेनैव ॥ शङ्का विश्वाससन्धाने विभागे रिक्थिनां सदा । क्रियासमूहकर्तृत्वे कोशमेव प्रदापयेदिति ॥

अथाविभाज्यम् ॥

मनुः । विद्याधनं तु यद्यस्य तत्तस्यैव धनं भवेत् । मैत्रमौद्वाहिकं चैव माधुपर्किकमेव च ॥ व्यासः । विद्याप्राप्तं शौर्यधनं यच्च सौदायिकं भवेत् । विभागकाले तत्तस्य नान्वेष्टव्यं स्वरिक्थिभिः ॥ सौदायिकं वक्ष्यते । एतच्च पितृद्रव्याविरोधेनार्जितं ज्ञेयम् ॥ तथाच याज्ञवल्क्यः पितृद्रव्याविरोधेन यदन्यत्स्वयमर्जितम् । मैत्रमौद्वाहिकं चैव दायादानां न तद्भवेत् ॥ क्रमादभ्यागतं द्रव्यं हृतमभ्युद्धरेत्तु यः । दायादेभ्यो न तद्दद्याद्विद्यया लब्धमेव च ॥ क्रमागतायामुद्धृतायां भुवि विशेषमाह शङ्खः । पूर्वनष्टां तु यो भूमिमेकश्चेदुद्धरेत्क्रमात् । यथाभागं लभन्त्यन्ये दत्त्वांशं तु तुरीयकम् ॥

उद्धृतायाश्चतुर्थमंशमुद्धृत्य दत्त्वावशिष्टमुद्धरांशसह विभजेयुः॥ मनुः। अनुपघ्नन् पितृद्रव्यं श्रमेण यदुपार्जयेत्। दायादेभ्यो न तद्दद्याद्विद्यया लब्धमेव च॥ व्यासः। अनाश्रित्य पितृद्रव्यं स्वशक्त्याप्नोति यद्धनम्। दायादेभ्यो न तद्दद्याद्विद्यालब्धं च यद्धनम्।

विद्यालब्धं विशिनष्टि कात्यायनः। परभक्तोपयोगेन विद्या प्राप्तान्यतस्तु या। तया लब्धं धनं यत्तु विद्याप्राप्तं तदुच्यते॥ एतदेव विशदयति स एव। उपन्यस्ते तु यल्लब्धं विद्यया पणपूर्वकम्। विद्याधनं तु तद्विद्याद्विभागे न विभज्यते॥ शिष्यादार्त्विज्यतः प्रश्नात्सन्दिग्धप्रश्ननिर्णयात्। स्वज्ञानशंसनाद्वादाल्लब्धं प्राध्ययनाच्च यत्॥ विद्याधनं तु तत्प्राहुर्विभागे न विभज्यते। शिल्पिष्वपि हि धर्मोऽयं मूल्याद्यच्चाधिकं भवेत्॥ विद्यालब्धं क्रतं चैव याज्यतः शिष्यतस्तथा। एतद्विद्याधनं प्राहुः सामान्यं यदतोऽन्यथा॥ परं निरस्य यल्लब्धं विद्यया पणपूर्वकम्। विद्याधनं तु तद्विद्यान्न विभाज्यं बृहस्पतिः॥ विद्याप्रतिज्ञयालब्धं शिष्यादाप्तं च यद्भवेत्। ऋत्विक्त्वात्तेन यल्लब्धमेतद्विद्याधनं भृगुः॥ उपन्यासः क्रमजटादीनां सङ्कलितानां पाठ इति मदनरत्ने। सभायां गूढप्रमेयविवृतिरिति केचित्। पणपूर्वकमुपन्यस्त इत्यन्वयः। शंसनं प्रख्यापनम्। प्राध्ययनं प्रकृष्टाध्ययनम्। शिल्पिष्वपीति अयं विद्याधर्मः शिल्पिष्वपि ज्ञेय इत्यर्थः। मूल्याधिकं पारितोषिकम्। ऋत्विक्त्वात् उपदर्शनम्। अत्र सर्वत्रापि विद्याधिगमे तथा द्रव्यार्जने च पितृद्रव्याविरोधे सत्येवाविभाज्यत्वं विरोधे तु विभाज्यमेव॥ अत एव कात्यायनः। कुले विनीतविद्यानां भ्रातॄणां पितृतोऽपि वा। शौर्यप्राप्तं तु यद्वित्तं विभाज्यं तद्बृहस्पतिः॥ पितृद्रव्यविरोधेऽप्यर्जकस्यांशद्वयमस्त्येव। येन चैषां स्वयमुपार्जितं स्यात्स द्व्यंशमेव हरेदिति वसिष्ठोक्तेः॥ कश्चिद्विशेषं विद्याधने विशेषमाह नारदः। कुटुम्बं बिभृयाद्भ्रातुर्यो विद्यामधिगच्छतः। भागं विद्याधनात्तस्मात्स लभेताश्रुतोऽपि सन्॥ अश्रुतोऽविद्य इति मदनरत्ने भागं दास्यामीत्यप्रतिश्रुत इति तु युक्तम्॥

पितृद्रव्याविरोधार्जिते विशेषमाह गौतमः। स्वमर्जितं वैद्यो वैद्येभ्यः कामं दद्यादिति॥ विद्यां वेत्तीति वैद्यः। स इच्छया विद्वद्भ्यो भ्रातृभ्यो दद्यादित्यर्थः॥ कात्यायनः। नावैद्यानां तु वैद्येन देयं विद्याधनं क्वचित्। समविद्याधिकानां तु देयं वैद्येन तद्भवेत्। वैद्यो वैद्याय नाकामो दद्यादंशं स्वतो धनात्। पितृद्रव्यं समाश्रित्य न चेत्तेन तदाहृतम्॥ अयं च निषेधो विद्यमानभ्रातॄणां धनान्तरसत्त्वे॥ धनान्तराभावे तु तेभ्योऽपि देयमेवेति मदनः॥ पित्रादिदत्तस्याविभाज्यत्वमाह बृहस्पतिः। पितामहपितृभ्यां च दत्तं मात्रापि यद्भवेत्। तस्य तन्नापहर्तव्यं शौर्यभार्याधने तथा॥

नारदः। शौर्यभार्याधने चोभे यच्च विद्याधनं भवेत्। त्रीण्येतान्यविभाज्यानि प्रसादो यश्च वै पितुः॥ कात्यायनः। ध्वजाहृतं भवेद्यत्तु विभाज्यं नैव तत्स्मृतम्। सङ्ग्रामादाहृतं यच्च विद्राव्य द्विषतां बलम्॥ स्वाम्यर्थे जीवितं त्यक्त्वा तद्ध्वजाहृतमुच्यते॥ स एव। आहवात् संश्रयं यत्र प्रसभं कर्म कुर्वते। तस्मिन्कर्मणि तुष्टेन प्रसादः स्वामिना कृतः॥ तत्र लब्धं तु यत्किञ्चिद्धनं शौर्येण तद्भवेत्॥ अत्र विशेषमाह व्यासः। साधारणं समाश्रित्य यत्किञ्चिद्वाहनादिकम्। शौर्यादिनाप्नोति धनं भ्रातरस्तत्र भागिनः॥ तस्य भागद्वयं देयं शेषास्तु समभागिनः॥ सौदायिकस्वरूपमाह व्यासः। ऊढया कन्यया वापि पत्युः पितृगृहादपि। भ्रातुः सकाशात्पित्रोर्वा लब्धं सौदायिकं स्मृतम्॥ कात्यायनः। यल्लब्धं लग्नकाले तु स्वजात्या कन्यया सह। कन्यागतं तु तद्वित्तं शुद्धं वृद्धिकरं स्मृतम्॥ वैवाहिकं तु तद्विद्याद्भार्यया यत्सहागतम्। धनमेवंविधं सर्वं विज्ञेयं धर्मसाधनम्॥ आदायार्षन्तु गोद्वयमिति प्रकारेण लब्धं कन्यागतम्॥ अत्रापि विद्याधनवदेव पितृद्रव्याविरोधश्चेदविभाज्यत्वम्। विद्यादिव्यतिरिक्तप्रकारेण तु लब्धं विभाज्यमेव॥ तथाच मनुः। अविद्यानां तु सर्वेषामीहातश्चेद्धनं भवेत्। समस्तत्र विभागः स्यादपित्र्य इति धारणा॥ ईहा कृष्यादिचेष्टा। अपित्र्ये पितृद्रव्यानाश्रयणे॥ अन्यदप्यविभाज्यमाह मनुः। वस्त्रं पत्रमलङ्कारं कृतान्नमुदकं स्त्रियः। योगक्षेमं प्रचारं च न विभाज्यं प्रचक्षते॥ पत्रं वाहनम्। वस्त्रपत्रालङ्कारा ये येन धृतास्ते तस्यैव सममूल्याश्चेत्। न्यूनाधिकमूल्यास्तु विभाज्या एव॥ पितृधृतं तु वस्त्रादि तच्छ्राद्धभोक्त्रे देयम्॥ वस्त्रालङ्कारशय्यादि पितुर्यद्वाहनादिकम्। गन्धमाल्यैः समभ्यर्च्य श्राद्धभोक्त्रे तदर्पयेदिति बृहस्पत्युक्तेः॥ विषमेष्वजादिषु विशेषमाह मनुः। अजाविकं सैकशफं न जातु विषमं भजेत्। अजाविकं सैकशफं ज्येष्ठस्यैव विधीयते॥ कृतान्नोदके यथासम्भवमुपयोज्ये। स्त्रियो दास्यो विषमा यथासम्भवं कर्म कारणीयाः। समास्तु विभाज्याः। पित्रवरुद्धास्तु समा अपि न विभाज्याः। स्त्रीषु च संयुक्तास्वविभाग इति गौतमोक्तेः॥ योगक्षेमशब्देन मन्त्रिपुरोहितादय उच्यन्ते इति कल्पतरौ॥ लौगाक्षिस्तु क्षेमं पूर्तं योगमिष्टमित्याहुस्तत्त्वदर्शिनः। अविभाज्ये तु ते प्रोक्ते शयनासनमेव च इत्याह॥ तत्र पूर्तं तडागारामादि। इष्टं यागविप्रभोजनादि। तदर्थमविभागदशायां सर्वानुमत्या यद्द्रव्यं येनोत्सृज्य पृथक् स्थापितं तेन द्रव्येण स धर्मस्तेनैव कार्यो नान्येन नवा सम्भूय सर्वैरित्यर्थः। प्रचारो गृहादिमार्गः गवादिप्रचारार्था भूश्च॥ यत्तु शङ्खलिखितौ न वास्तुविभागो नोदपात्रालङ्कारोपयुक्तवाससामिति॥ यच्च व्यासः अविभागः सगोत्राणामासहस्रकुलादपि। याज्यं क्षेत्रं च पत्रं च कृतान्नमुदकं स्त्रिय

इति वास्तुक्षेत्रयोरविभाज्यत्वमाहुः तद्धर्मवास्तुगोप्रचारक्षेत्रादिपरम्। प्रतिग्रहो पात्रयोस्तयोः क्रयादिविभागप्रतिषेधपरम् पूर्वोक्तनिषेधात्॥ अल्पमूल्ययोर्मूल्येन विभागो न स्वरूपत इत्येवम्परं वा॥ वस्त्रादिषु विशेषमाह बृहस्पतिः। वस्त्रादयो ऽविभाज्या यैरुक्तं तैर्न विचारितम्। धनं भवेत्समृद्धानां वस्त्रालङ्कारसंश्रितम्॥ मध्यस्थितमनाजीव्यं दातुं नैकस्य शक्यते। युक्त्या विभजनीयं तदन्यथा ऽनर्थकं भवेत्॥ विक्रीय वस्त्राभरणमृणमुद्ग्राह्य लेखितम्। कृतान्नं चाकृतान्नेन परिवर्त्य विभज्यते॥ उद्धृत्य कूपवाप्यम्भः स्वानुसारेण भुज्यते। एकां स्त्रीं कारयेत्कर्म यथांशेन गृहे गृहे॥ बहवः समांशतो देया दासानामप्ययं विधिः। यथाभागाऽनुसारेण सेतुः क्षेत्रं विभज्यते॥ प्रचारश्च यथांशेन कर्तव्यो रिक्थिभिः सदेति॥ उद्ग्राह्येति अधमर्णादुद्धृत्येत्यर्थः॥ कात्यायनः। धनं पत्रनिविष्टं तु धर्मार्थं यन्निरूपितम्। उदकं चैव दासश्च निबन्धो यः क्रमागतः॥ धृतं वस्त्रमलङ्कारो नानुरूपं तु यद्भवेत्। यथा कालोपयुक्तानि तथा योज्यानि बन्धुभिरिति॥ धनमिति धर्मांशेनोत्सृज्य पत्रे लिखितमित्यर्थः। उदकं कूपादिगतम्। निबन्धो वृत्तिः। नानुरूपं विभागायोग्यम्॥

भ्रात्रादिवञ्चनया स्थापितद्रव्यस्य विभागमाह याज्ञवल्क्यः। अन्योन्यापहृतं द्रव्यं विभक्ते यत्तु दृश्यते। तत्पुनस्ते समैरंशैर्विभजेरन्निति स्थितिः॥ अन्योन्यापहृतं ज्येष्ठकनिष्ठाद्यपहृतम्॥ यत्तु मनुः यो लोभाद्विनिकुर्वीत ज्येष्ठो भ्रातॄन्यवीयसः। सो ऽज्येष्ठः स्यादभागश्च नियन्तव्यश्च राजभिरिति॥ तत्रापि ज्येष्ठपदं दण्डापूपिकन्यायेन दायादमात्रोपलक्षकम्। ज्येष्ठस्यापि दोषः किमुत यवीयसामित्यर्थः॥ अत एव गौतमः। यो वै भागिनं भागान्नुदते चयत एवैनं स यदि चैनं न चयते ऽथ पुत्रमथ पौत्रं चयत इति॥ भागिनं भागार्हं भागान्नुदते ऽपाकरोति स तुन्न एनं नोत्तारं चयते नाशयति। यदि तं न नाशयति तत्पुत्रं पौत्रं वा नाशयतीत्यर्थः॥ नारदः। विभक्तेनैव यत्प्राप्तं तत्तस्यैव धनं भवेत्। हृतं नष्टं च यल्लब्धं प्रागुक्तं च पुनर्भवेदिति॥ प्रागुक्तं दायादमध्ये केनचित्प्रच्छादितम्। पुनर्भवेद्विभाग इति शेषः॥ मनुः। विभागे तु कृते किञ्चित्सामान्यं यत्तु दृश्यते। नासौ विभागो विज्ञेयः कर्तव्यः पुनरेव होति॥

केनचिद्विभागस्यापलापे निर्णयकान्याह याज्ञवल्क्यः। विभागनिह्नवे ज्ञातिबन्धुसाक्ष्यभिलेखितैः। विभागभावना ज्ञेया गृहक्षेत्रैश्च यौतकैः॥ यौतकैः पृथग्दत्तैर्गृहक्षेत्रैरिति विशेषणविशेष्यभावः॥ नारदः। विभागधर्मसन्देहे दायादानां विनिर्णयः। ज्ञातिभिर्भागलेख्येन पृथक्कार्यप्रवर्तनात्॥ स एव। भ्रातॄणामविभक्तानामेको धर्मः प्रवर्तते। विभागे सति धर्मोऽपि भवेत्तेषां पृथक्पृथक्॥ अथाविभक्ता-

नामित्येवोद्देश्यसमर्पकम्। भ्रातृणामिति तु तद्विशेषणत्वादविवक्षितम्॥ तेन पितृपितामहपुत्रपौत्रपितृव्यभ्रातृभ्रातृपुत्रादिष्वर्थाविभक्तेष्वेक एव धर्मः॥ अथ देशकालकर्त्रादीनामैक्ये कर्मणोऽनेकप्रयोगविषयिणी न्यायेन प्राप्तापि तन्त्रताऽविभक्तकर्तृभेदेऽपि वचनेन बोध्यते॥ तेन श्रौतस्मार्ताग्निसाध्यास्तावत्कर्मा अविभक्तानां पृथगेव। आहवनीयत्वावसथ्यत्वादीनां समभिव्याहारेण भेदात्॥ एवं श्राद्धमपि पितृव्यभ्रातृपुत्रादीनाममावास्यादौ देवताभेदात्पृथगेव। भ्रातृणां तु निरग्निकानां तन्त्रेणैव देवतैक्यात्। प्रवासादिना देशभेदे तु पृथगेव। साग्निकानामनग्निसाध्यान्यपि पृथगेव। गृहदेवतापूजावैश्वदेवादि तु तन्त्रेणैव॥ अत एव शाकलः। एकपाकेन वसतामेकं देवार्चनं गृहे। वैश्वदेवं तथैवैकं विभक्तानां गृहे गृहे इति॥ यत्तु पारिजाते आश्वलायनः एकपाकेन वसतां विभक्तानामपि प्रभुः। एकस्तु चतुरो यज्ञान् कुर्यात्पाग्यज्ञपूर्वकान्॥ अविभक्ता विभक्ताश्च पृथक्पाका द्विजातयः। कुर्युः पृथक्पृथग्यज्ञान् भोजनात्प्राग्दिने दिने इति तत्संसृष्टिपरम्। विभक्तानामप्येकपाकेन वसतामित्यनेन विभक्ता अविभक्ताश्चेत्यनेन च तत्प्रतिपादनात्॥ अतः संसृष्टिनां कदाचित्पृथक्पाके पृथग्महायज्ञाः। वाग्यज्ञो ब्रह्मयज्ञः॥ तत्पूर्वकामित्यतद्गुणसंविज्ञानः तद्गुणसंविज्ञाने तु वाग्यज्ञत्यागनर्थकम् प्रथमत्यागे कारणाभावादिति न्यायादेव चतुर्णां प्राप्तिसम्भवात्॥ अतो ब्रह्मयज्ञः पृथगेव कार्यः॥ इदं तु वचनद्वयं शिष्टैस्तथा नाद्रियते॥ यानि तु धर्मप्रवृत्तौ वचांसि अविभक्ताः सुताः पित्रोरेकं कुर्युर्मृताब्दिकम्। देशान्तरे पृथक्कुर्युर्दर्शश्राद्धानुमासिकम्॥ ग्रामान्तरं व्रजेयुश्चेदविभक्ताः सदैव हि। दर्शं च मासिकं श्राद्धं कुर्युः पित्रोः पृथक्पृथक्॥ अविभक्ताः पृथग्ग्रामाः स्वस्वार्जितधनाश्रिताः। कुर्युस्ते भ्रातरः श्राद्धं पार्वणं च पृथक्पृथगिति॥ यच्च स्मृतिसमुच्चये वैश्वदेवः क्षयाहश्च महालयविधिस्तथा। देशान्तरे पृथक्कार्यौ दर्शश्राद्धं तथैव चेति तान्यपि देशान्तरस्थसंसृष्टविषयाणीति केचित्॥ वस्तुतस्तेतानि निर्मूलान्येव॥ अथवा देशकालकर्त्रादीनामैक्ये न्यायेन प्राप्ता तन्त्रता कर्तृभेदे तु वाचनिकी देशभेदे तु वचनस्य न्यायस्य चाभावात्पृथगेव श्राद्धादीनीति युक्तिमूलकानि केनचित्कृतानीति दिक्॥ अन्यान्यपि विभागलिङ्गान्याह नारदः॥ साक्षित्वं प्रातिभाव्यं तु दानग्रहणमेव च। विभक्ता भ्रातरः कुर्युर्नाविभक्ताः परस्परम्॥ दानग्रहणपशुगृहक्षेत्रपरिग्रहाः। विभक्तानां पृथग्ज्ञेया दानधर्मागमव्ययाः॥ येषामेताः क्रिया लोके प्रवर्तन्ते स्वरिक्थिषु। विभक्तानवगच्छेयुर्लेख्यमप्यन्तरेण तानिति॥ दानग्रहणे ऋणविषयी। ते एव दानग्रहणे द्वितीयश्लोकेऽनूद्येते स्पष्टार्थम्। पश्वादिपरिग्रहा विभक्तानां पृथक्पृथगनुष्ठिता एव

स्वत्वोत्पादकाः। अविभक्तानां त्वेकेन कृताः परस्यापि स्वत्वजनका इत्यर्थः। दानधर्मौ लेख्यादिः। आगमो मूलकलाप्रवेशादिः॥ बृहस्पतिः। पृथगायव्ययाधानं कुसीदं च परस्परम्। वणिक्पथं च ये कुर्युर्विभक्तास्ते न संशयः॥ वणिक्पथं वाणिज्यम्॥ याज्ञवल्क्यः। भ्रातृणामथ दम्पत्योः पितुः पुत्रस्य चैव हि। प्रातिभाव्यमृणं साक्ष्यमविभक्ते न तु स्मृतम्॥ एतल्लिङ्गाभावे तु दिव्यम्। एषामन्यतमाभावे दिव्यान्यतममुच्यते इति तेनैवोक्तत्वात्॥ यत्तु वृद्धयाज्ञवल्क्यः विभागधर्मसन्देहे बन्धुसाक्ष्यभिलेखितैः। विभागभावना कार्या न भवेद्दैविकी क्रियेति तल्लिङ्गान्तरसद्भावपरम्॥ कथञ्चिदपि विभक्ताविभक्तसन्देहानपगमे पुनर्विभागमाह मनुः। विभागे यत्र सन्देहो दायादानां परस्परम्। पुनर्विभागः कर्तव्यः पृथक्स्थानस्थितैरपि॥

विभक्तकृत्यमाह नारदः। यद्येकजाता बहवः पृथग्धर्माः पृथक्क्रियाः। पृथक्कर्मगुणोपेता न चेत्कार्येषु सम्मताः॥ स्वभागान्यदि दद्युस्ते विक्रीणीयुरथापि वा। कुर्युर्यथेष्टं तत्सर्वमीशास्ते स्वधनस्य वा इति॥ धर्मा वैधाः पञ्चमहायज्ञाद्याः। क्रिया वाणिज्याद्या लौकिक्यः। कर्मगुणाः कर्मसाधनानि गृहोपस्करादीनि। एतेषां पार्थक्येन विभागो लक्ष्यते। ते विभक्ताः परस्परानुमतिं विनापि दानविक्रयादि कुर्युरित्यर्थः॥ यत्तु बृहस्पतिः अविभक्ता विभक्ता वा दायादाः स्थावरे समाः। एको ह्यनीशः सर्वत्र दानाधमनविक्रये इति तद्द्व्यांशे विभक्तानामप्यविभक्तचेष्टाद्युत्पन्नशस्यादिदानादावनुमतिं विनाधिकारप्रतिषेधार्थमिति मदनः विभक्ताविभक्तसन्देहनिरासार्थं विभक्तानुज्ञया व्यवहारसौकर्यार्थमिति विज्ञानेश्वरादयः॥ स्वेच्छया विभक्तं पुनश्च विवदमानं प्रत्याह स एव। स्वेच्छाकृतविभागो यः पुनरेव विसंवदेत्। स राज्ञांशे स्वके स्थाप्यः शासनीयोऽनुबन्धकृत्॥ अनुबन्धो निर्बन्धः॥

अथ अप्रतिबन्धदायहरणक्रमः॥ तत्र विभक्तस्यासंसृष्टिनो धनग्रहणे क्रममाह याज्ञवल्क्यः। पत्नी दुहितरश्चैव पितरौ भ्रातरस्तथा। तत्सुता गोत्रजा बन्धुशिष्यसब्रह्मचारिणः॥ एषामभावे पूर्वस्य धनभाग्युत्तरोत्तरः। स्वर्यातस्य ह्यपुत्रस्य सर्ववर्णेष्वयं विधिरिति॥

पत्नी पतिव्रता धनहारिणी न व्यभिचारिणी। पत्नी भर्तुर्धनहरी या स्यादव्यभिचारिणीति कात्यायनोक्तेः। विधवा यौवनस्था चेन्नारी भवति कर्कशा। आयुषः क्षपणार्थं तु दातव्यं जीवनं तदेति हारीतोक्तेः॥ प्रजापतिः। पूर्वं मृता त्वग्निहोत्रं मृते भर्तरि तद्धनम्। लभेत्पतिव्रता नारी धर्म एष सनातनः॥ अग्निहोत्रमग्नीन्॥ स एव। जङ्गमं स्थावरं सर्वं कुप्यं हेमरसाम्बरम्। आदाय

दापयेच्छ्राद्धं माससाण्मासिकाब्दिकम् ॥ पितृव्यगुरुदौहित्रान् भर्तुः स्वस्रीयमातु-
लान् । पूजयेत्कव्यपूर्ताभ्यां वृद्धांश्चाप्यतिथीन् स्त्रिय इति ॥ कुप्यं चपुस्तीसादि ॥ यत्तु
बृहस्पतिः यद्विभक्ते धनं किञ्चिदाध्यादि विविधं स्मृतम् । तज्जाया स्थावरं मुक्त्वा
लभेत मृतभर्तृका ॥ व्यासस्यापि कृतेऽप्यंशे न स्त्री स्थावरमर्हति तद्दुहितृरहितपत्नी-
परम् ॥ दुहितृमती तु स्थावरमपि लभत इति स्मृतिचन्द्रिकायाम् ॥ दायादानुमतिं
विना स्थावरविक्रयादिनिषेधपरमिति माधवः ॥ यत्तु कात्यायनः मृते भर्तरि भर्त्रंशं
लभेत कुलपालिका । यावज्जीवं न हि स्वाम्यं दानाधमनविक्रये इति तद्वन्दिचारणाद्य-
र्थदानादिनिषेधपरम् ॥ अदृष्टार्थदानतदुपयोग्याधमनादि तु भवत्येव । स्थावरं
जङ्गमं चेत्यादिपूर्वोक्तवाक्यात् । व्रतोपवासनिरता ब्रह्मचर्ये व्यवस्थिता । दमदानरता
नित्यमपुत्रापि दिवं व्रजेदिति कात्यायनाच्च ॥ यदपि स एव अदायिकं राजगामि
योषिद्भृत्यौर्ध्वदेहिकम् । अपास्य श्रोत्रियद्रव्यं श्रोत्रियेभ्यस्तदर्पयेदिति ॥ यदपि
नारदः अन्यत्र ब्राह्मणात्किञ्चिद्राजा धर्मपरायणः । तत्स्त्रीणां जीवनं दद्यादेष
दायविधिः स्मृत इति तदवरुद्धस्त्रीपरम् । पत्नीपदाश्रवणात् ॥ यत्तु नारदः भ्रातृ-
णामप्रजाः प्रेयात्कश्चिच्चेत्प्रव्रजेत वा । विभजेरन्धनं तस्य शेषास्ते स्त्रीधनं विना ॥
भरणं चास्य कुर्वीरन् स्त्रीणामाजीवनक्षयात् । रक्षन्ति शय्यां भर्तुश्चेदाच्छिन्द्युरितरासु
त्विति तदविभक्तसंसृष्टमृतस्त्रीपरम् तत्प्रक्रमे पाठादिति मदनः ॥ कात्यायनः ।
स्वर्याते स्वामिनि स्त्री तु ग्रासाच्छादनभागिनी । अविभक्ते धनांशं तु प्राप्नोत्यामरणा
न्तिकम् ॥ अविभक्तपदं संसृष्टस्याप्युपलक्षणम् । तुशब्दो वाशब्दार्थे तेन पक्षद्वयम्
तत्रान्त्यः पत्नीपरः आद्योऽवरुद्धापर इति मदनः ॥ एतद्व्यवस्थामूलं चिन्त्यम् ॥
तात्त्विकीं तु व्यवस्थामाह स एव ॥ भोक्तुमर्हति कृप्तांशं गुरुशुश्रूषणे रता । न
कुर्याद्यदि शुश्रूषां चैलं पिण्डं नियोजयेदिति ॥ गुरुः श्वशुरादिः । तदिच्छायामंश
भाक्त्वम् अन्यथा ग्रासाच्छादनमात्रमित्यर्थः ॥ स एव । अपकारक्रियायुक्ता निर्लज्जा
चार्थनाशिनी । व्यभिचाररता या च स्त्रीधनं न च सार्हति ॥ यत्तु एतमेव विधिं
कुर्याद्योषित्सु पतितास्वपि । वस्त्रान्नमासां देयं तु वसेयुश्च गृहान्तिक इति
तद्भर्तृपरमिति ग्रन्थकृतः ॥ एवं विधिं पतितत्यागरूपम् ॥ शङ्कितव्यभिचाराया अपि
भरणमात्रमेव । विधवा यौवनस्था चेन्नारी भवति कर्कशा । आयुषः क्षपणार्थं तु
दातव्यं जीवनं तदेति हारीतोक्तेः ॥ कर्कशा शङ्कितव्यभिचारेति मिताक्षरायाम् ॥
तत्सिद्धं संयता पत्नी धनग्राहिणीति ॥ अनेकास्तु ता विभज्य गृह्णीयुः ॥

तस्या अभावे दुहिता ॥ अत एव मनुः । यथैवात्मा तथा पुत्रः पुत्रेण दुहिता
समा । तस्यामात्मनि तिष्ठन्त्यां कथमन्यो धनं हरेत् ॥ दुहितरोऽनेकाश्चेद्विभज्य

गृह्णीयुः। तत्रापि काचिदूढा काचिदनूढा चेदनूढैव। पत्नी भर्तुर्धनहरी या स्यादव्यभिचारिणी। तदभावे तु दुहिता यद्यनूढा भवेत्तदिति कात्यायनीयात्। ऊढासु काचित्सधनापरा निर्धना चेत्सैव लभेत। स्त्रीधनं दुहितृणामप्रत्तानामप्रतिष्ठितानां चेति गौतमोक्तेः॥ अप्रतिष्ठिता निर्धना॥ स्त्रीपदं पितुरप्युपलक्षकमिति साम्प्रदायिकाः॥

दुहित्रभावे दौहित्रः॥ अपुत्रपौत्रसन्ताने दौहित्रा धनमाप्नुयुः। पूर्वेषां तु स्वधाकारे पौत्रा दौहित्रका मता इति विष्णूक्तेः॥

दौहित्राभावे पिता। तदभावे माता॥ तथा च कात्यायनः। अपुत्रस्याथ कुलजा पत्नी दुहितरोऽपि वा। तदभावे पिता माता भ्राता पुत्राः प्रकीर्तिताः॥ विष्णुश्च। अपुत्रधनं पत्न्यभिगामि। तदभावे दुहितृगामि। तदभावे दौहित्रगामि। तदभावे पितृगामि। तदभावे मातृगामि। तदभावे भ्रातृगामि। तदभावे भ्रातृपुत्रगामि। तदभावे सकुल्यगामि॥ यत्तु विज्ञानेश्वरः द्वन्द्वापवादके पितरावित्येकशेषे क्रमाप्रतीतावपि तदर्थबोधके विग्रहवाक्ये मातृशब्दस्य पूर्वनिपातादपवादद्वन्द्वक्रमानुसारात्पितुः पुत्रान्तरसाधारण्यान्मातुस्त्वसाधारण्याच्चादौ मातुस्तदभावे पितुर्धनग्रहणमूचे तदेतद्वचोविरोधादपास्तम्। विग्रहवाक्ये मातृशब्दपूर्वनिपात एकशेषस्य द्वन्द्वैकल्पिकत्वेन तदपवादत्वे साधारण्यासाधारण्ययोः क्रमनियामकत्वे मानाभावाच्च॥ मातुरभावे भ्राता सोदरः। तदभावे तत्पुत्रः॥ यत्तु विज्ञानेश्वरादयः सोदराभावे भिन्नोदरास्तदभावे सोदरसुता इत्याहुः तन्न। भ्रातृपदस्य सोदरे शक्त्या भिन्नोदरे च गौण्या वृत्तिद्वयविरोधात्॥ केचित्तु भ्रातर इत्यत्र भ्रातृपुत्रौ स्वसृदुहितृभ्यामित्यनुशासनात् भ्रातरश्च स्वसारश्च भ्रातर इति विरूपैकशेषेण भ्रात्रभावे भगिन्य इत्याहुः तन्न। विरूपैकशेषे मानाभावात्॥ भ्रातृपुत्रा अपि पितृव्यमरणकालेजीवत्पितृकास्तथाऽसन्नातधनसम्बन्धाश्चेदनेकपितृकाणां तु पितृतो भागकल्पनेति न्यायेन पित्र्यमंशं पितृव्यान्तरैः सह विभज्य गृह्णीयुः॥

भ्रातृपुत्राभावे गोत्रजाः सपिण्डाः॥ तत्राप्यादौ पितामही॥ मातर्यपि च वृत्तायां पितुर्माता हरेद्धनमिति मनूक्तेः॥ यद्यपीयं मातुरनन्तरं श्रुता तथापि बहुक्रमभ्रातृपुत्रान्तेषु मध्ये निवेशायोगादागन्तूनामन्ते निवेश इतिवद्भ्रातृपुत्रान्ते निवेश्या॥

तदभावे भगिनी॥ अनन्तरः सपिण्डाद्यस्तस्य धनं भवेदिति मनूक्तेः॥ बहवो ज्ञातयो यत्र सकुल्या बान्धवास्तथा। यस्त्वासन्नतरस्तेषां सोऽनपत्यधनं हरेदिति वृहस्पत्युक्तेः। तस्या अपि भ्रातृगोत्र उत्पन्नत्वेन गोत्रजत्वाविशेषाच्च॥ सगोत्रता परं नास्ति। न च सात्र धनग्रहणप्रयोजकत्वेनोक्ता॥

तदभावे पितामहसपत्नभ्रातरौ विभज्य गृह्णीतः। स्वजनकजनकत्वेन स्वजनकजन्यत्वेन च समानप्रत्यासत्तेः॥ प्रत्यासत्तिसाम्ये पाठक्रमाद्यनुविशेषान्तराभावे चान्यच्चाप्येवमेव॥ तेन तयोरभावे प्रपितामहपितृव्यभिन्नोदरभ्रातृपुत्रा विभज्य गृह्णीयुः॥

सर्वसपिण्डाः समानोदकाश्च प्रत्यासत्तिक्रमेण॥ तांश्चाह मनुः सपिण्डता तु पुरुषे सप्तमे विनिवर्तते। समानोदकभावस्तु जन्मनाम्नोरवेदन इति॥ सप्तमेऽतीत इत्यर्थः॥

सोदकाभावे बन्धवः। ते च स्मृत्यन्तरे। आत्मपितृष्वसुः पुत्रा आत्ममातृष्वसुः सुताः। आत्ममातुलपुत्राश्च विज्ञेया आत्मबान्धवाः॥ पितुः पितृष्वसुः पुत्राः पितुर्मातृष्वसुः सुताः। पितुर्मातुलपुत्राश्च विज्ञेयाः पितृबान्धवाः॥ मातुः पितृष्वसुः पुत्रा मातुर्मातृष्वसुः सुताः। मातुर्मातुलपुत्राश्च विज्ञेया मातृबान्धवाः॥ अत्र क्रमः पाठिक एव। ननु पत्न्यादीनां सर्वेषां मृतनिरूपितानामेव धनभाक्त्वम् बान्धवानामपि तथैवास्तु अतः कथं पितुर्मातुश्च बान्धवानां धनसम्बन्धः। पितुः पितृष्वसुः पुत्रा इत्यादि तु संज्ञासंज्ञिसम्बन्धमात्रार्थं न धनसम्बन्धार्थमिति चेदुच्यते। विनाप्येतद्वचनं पितृमातुलपितृपितृव्यादिष्विव पितृमातृबान्धवेष्वपि योगेनैव तच्छब्दप्रवृत्तिसम्भवे संज्ञासंज्ञिसम्बन्धबोधनानर्थक्यापत्तिः॥ तेन बन्धूनुद्दिश्य धनसम्बन्धविधौ पितृमातृबन्धुप्रापणेनैव वचोऽर्थवत्ता॥ बन्धूद्देशेनाशौचादिविधावप्येवमेवेति दिक्॥

बन्धूनामभाव आचार्यः तदभावे शिष्यः॥ पुत्राभावे प्रत्यासन्नः सपिण्डस्तदभाव आचार्यस्तदभावेऽन्तेवासीत्यापस्तम्बोक्तेः॥

शिष्याभावे सब्रह्मचारी। तदभावे श्रोत्रियः॥ श्रोत्रिया ब्राह्मणस्यानपत्यस्य रिक्थं भजेरन्निति गौतमोक्तेः॥

तदभावेऽन्यो ब्राह्मणः॥ सर्वेषामप्यभावे तु ब्राह्मणा रिक्थभागिनः। त्रैविद्याः शुचयो दान्तास्तथा धर्मो न हीयत इति कात्यायनीयात्। नारदश्च। सर्वत्रादायिकं राजा हरेद्ब्रह्मस्ववर्जितम्। अदायिकं तु ब्रह्मस्वं श्रोत्रियेभ्यः प्रदापयेत्॥ बृहस्पतिः। येऽपुत्राः क्षत्रविट्शूद्राः पत्नीभ्रातृविवर्जिताः। तेषां धनहरो राजा सर्वस्याधिपतिर्हि सः॥

यत्यादिरिक्थे विशेषमाह याज्ञवल्क्यः। वानप्रस्थयतिब्रह्मचारिणां रिक्थभागिनः। क्रमेणाचार्यसच्छिष्यधर्मभ्रात्रेकतीर्थिनः॥ ब्रह्मचारी नैष्ठिकः। उपकुर्वाणस्य तु पित्रादय एव। धर्मभ्राता प्रतिपन्नो भ्राता। एकतीर्थः एकाश्रमी। धर्मभ्राता चासावेकतीर्थी चेति कर्मधारयः॥ आचार्यादीनां प्रातिलोम्येन क्रम इति विज्ञानेश्वरः॥ वनस्थस्य धनमाचार्यो गृह्णीयाच्छिष्यो वेति विपरीतानुलोम्येनेति मदनः॥ मृतस्य रिक्थग्राहिणा येन केनापि राजपर्यन्तेनौर्ध्वदैहिकं दत्त्वा‌ऽन्तं

कार्यम् ॥ तथा च विष्णुः। यश्चार्थहरः स पिण्डदायी स्मृत इति ॥ निरूपितं चेदं श्राद्धमयूखेऽधिकारिनिर्णये मया ॥

॥ अथ संसृष्टिनिर्णयः ॥

तत्र संसर्गमाह बृहस्पतिः। विभक्तो यः पुनः पित्रा भ्रात्रा वैकत्र संस्थितः। पितृव्येणाथ वा प्रीत्या स तत्संसृष्ट उच्यते ॥ अत्र पितृभ्रातृपितृव्यैरेव सह संसृष्टता नान्येन वचनेऽनुपादानादिति मिताक्षरादिषु। विभागकर्तृसामानाधिकरण्येनैव सेति युक्तम् ॥ पित्रादिपदानि तु विभागकर्तृमात्रोपलक्षकाणि। अर्धमन्तर्वेदिमिनोत्यर्धं बहिर्वेदीतिवत्। अन्यथा वाक्यभेदात् ॥ तेन पत्नीपितामहभ्रातृपौत्रपितृव्यपुत्रादिभिरपि सह संसृष्टता भवति ॥ विभक्तो य एकत्र स्थितः स संसृष्ट इति सामानाधिकरण्या-द्विभक्तभ्रात्रोः पुत्रादीनां न संसर्गः ॥ विद्यमानं भावि वा धनमावयोः पुनर्विभागावधि-साधारणमित्याकारिका बुद्धिरिच्छा वा संसर्गः ॥ तत्र संसृष्टिनां पुनर्विभागे विशेषमाह मनुः। संसृष्टाः सहजीवन्तो विभजेरन्पुनर्यदि। समस्तत्र विभागः स्याज्ज्यैष्ठ्यं तत्र न विद्यते ॥ अत्र समस्तत्र विभागः स्यादित्यनेनैव वैषम्ये निरस्ते पुनर्ज्यैष्ठ्यप्रतिषेधो ज्यैष्ठ्यकृतमेव वैषम्यं नास्ति संसर्गकालिकद्रव्यन्यूनाधिक्यकृतं तु विभागे वैषम्यमस्त्येवेति ज्ञापनार्थमिति केचित् ॥ ज्यैष्ठ्यमित्यादेरर्थवादमात्रत्वात्द्रव्यन्यूनाधिक्येऽपि सम एव विभागः ॥ आचारोऽप्येवम् ॥ तेनाचारमूलकत्वेऽस्य वचसः सम्भवति तद्विरुद्ध श्रुतिकल्पनमन्याय्यम् ॥ व्यवहारशास्त्रस्य व्याकरणवन्न्यायेनाचारमूलकत्वाच्चेति तु परे ॥ बृहस्पतिः। संसृष्टिनां तु यः कश्चिद्विद्याशौर्यादिभिर्धनम्। प्राप्नोति तस्य दातव्यो द्व्यंशः शेषाः समांशिनः ॥ अर्जकस्य द्वौ भागावित्यनेनैव भागद्वयसिद्धाव संसृष्टविभाग [illegible] द्रव्यार्जने नैवार्जने भागद्वयम् संसृष्टिभागे तु संसृष्टधनविरोधेनाप्य-र्जने भागद्वयमित्यर्थवदेतद्वचनमिति मदनः ॥

संसृष्टिधनहरणाधिकारिणमाह याज्ञवल्क्यः। संसृष्टिनस्तु संसृष्टी सोदरस्य तु सोदरः ॥ पत्नी दुहितर इत्यादेरपवादोऽयं ॥ तेनायमर्थः। संसृष्टधनहरणाधि-कारितावच्छेदकं न पत्नीत्वादि किंतु संसृष्टित्वमिति ॥ यत्तु विज्ञानेश्वर मदनादयोऽ-पवादस्योत्सर्गसमानविषयत्वनियमात्पूर्वोक्तस्वर्यातस्यापुत्रस्येत्यंतस्यदानुषङ्गाच्चैतदपि पुत्र-पौत्रप्रपौत्रहीनविषयम् अतस्तादृशमृतसंसृष्टिधनमसंसृष्टिसन्निहितपत्न्यादिसत्त्वेऽप्यन्यः संसृष्टेव गृह्णीयादिति तच्चिन्त्यम्। तेन विनापि गतौ सम्भवन्त्यामनुषङ्गे मानाभावात् ॥ समानविषयत्वं तु न सर्वांशेऽपेक्षितं किं तु यथाकथंचिन्मृतसपिण्ड-विषयतया ॥ अपुत्रस्येति पदस्यानुषङ्गाभावे स्वर्यातस्येत्यस्याप्यनुषङ्गाभावेन मृतस्येति न

लभ्येतेति चेन्न । हीयेतांशप्रदानतो म्रियेतान्यतरो वापीति वक्ष्यमाणमनूक्त्या तल्लाभात् ॥ अनुषङ्गे तु पित्रासह संसृष्टासंसृष्टिनोः पुत्रयोः पुत्रपौत्रयोर्वा तुल्यांशापत्तिः । सपुत्रं प्रत्येतद्वचनाप्रवृत्तेः ॥ तत्र च व्यवहारशास्त्रप्रामाण्यनिदानव्यवहारविरोधः ॥ नन्वनुषङ्गाभावे सपुत्रं प्रत्यप्येतद्वचनप्रवृत्तेरसंसृष्टिपुत्रसंसृष्टिभ्रात्रादीनां समवाये भ्रात्रादिरेव लभेत न पुत्रादिरिति चेन्न । उत्तरार्धव्याख्यायां परिहरिष्यमाणत्वात् ॥ अथ प्रथमपादार्थमपवदति ॥ सोदरस्येति संसृष्टिनः संसृष्टीत्यनुषज्यते । मृतसंसृष्टिनो धनं संसृष्टिनोः सोदरासोदरयोः समवाये सोदर एव संसृष्टी गृह्णीयादित्यर्थः ॥ उत्तरार्धं दद्याच्चापहरेच्चांशं जातस्य च मृतस्य चेति ॥ मृतसंसृष्टिनो द्रव्यविभागकाले तत्प्रख्यापनस्पष्टगर्भायां पश्चादुत्पन्नस्य पुत्रस्यांशं तस्मै संसृष्टः पितृव्यादिर्दद्यात् तदभावे तु स्वयमेवांशं हरेदित्यर्थः ॥ अत्र पुत्रत्वमात्रं पित्र्यंशग्रहणाधिकारितावच्छेदकम् न विभागोत्तरोत्पन्नत्वम् । अप्रयोजकत्वाद्गौरवाद्दैशान्तरे विभागात्प्रागुत्पन्ने जाते चांशानधिकारितापत्तेः ॥ अतः पूर्वोत्पन्नायासंसृष्टिनोऽपि पुत्राय संसृष्टोऽपि पितृव्यादिस्तदंशं दद्यादेव ॥ असंसृष्टिसोदरसंसृष्टिभिन्नोदरयोर्विभज्य धनग्रहणमाह स एव ॥ अन्योदर्यस्तु संसृष्टी नान्योदर्यो धनं हरेत् । असंसृष्ट्यपि चादद्यात्संसृष्टो नान्यमातृज इति ॥ अत्रान्योदर्यान्यमातृजादिपदैर्न सापत्नो भ्रातैवोच्यते किंतु पितृव्यादिरपि । योगाविशेषात् ॥ अन्यथा पितृव्यादिभिः संसर्गप्रतिपादनस्यानर्थक्यापत्तिः संसृष्टिताप्रयुक्तकार्यान्तराभावात् ॥ असंसृष्ट्यपीति देहलीदीपवत्पूर्वोत्तरपदाभ्यामन्वेति ॥ संसृष्टपदं चावृत्त्या द्रव्यसंसर्गवत उदरसंसर्गवतश्च सोदरस्य बोधकम् ॥ आद्येऽर्थेऽपिशब्दोऽपि तदनन्तरं बोध्यः । श्लोकान्ते एवकारोऽध्याहार्यः ॥ तदेते वाक्यार्थाः ॥ अन्योदर्यो भिन्नोदरः पत्नीपितृपितामहसापत्नभ्रातृपितृव्यादिः संसृष्टी चेद्धनं हरेत् । असंसृष्ट्यप्यन्यो नेति ॥ ...नान्योदरस्यान्वयव्यतिरेकाभ्यां संसर्गो धनग्रहणे कारणमुक्तम् ॥ असंसृष्ट्यपि संसृष्टाख्यसोदरो गृह्णीयात् ॥ अनेन सोदरत्वमात्रमेव कारणमुक्तम् ॥ संसृष्टी द्रव्यसंसर्गवानन्यमातृज एव केवलं न गृह्णीयादिति ॥ तेनैकः संसृष्टत्वेन परः सोदरत्वेनेति द्वावपि विभज्य गृह्णीयातामिति निगर्वः ॥ एतमेवार्थं संसृष्टाधिकारे स्पष्टयति मनुः । येषां ज्येष्ठः कनिष्ठो वा हीयेतांशप्रदानतः । म्रियेताऽन्यतरो वापि तस्य भागो न लुप्यते ॥ सोदर्या विभजेयुस्तं समेत्य सहिताः समम् । भ्रातरो ये च संसृष्टा भगिन्यश्च सनाभय इति ॥ हीयेताश्रमान्तरगतपातित्यादिना । सोदर्या भ्रातर इत्यन्वयः । ये च संसृष्टाः पत्नीपितृपितामहसापत्नभ्रातृपितृव्यादयः ॥ अत्र विशेषमाह प्रजापतिः । अन्तर्धनं तु यद्द्रव्यं संसृष्टानां तु तद्भवेत् । भूमिं गृहं त्वसंसृष्टाः

प्रगृह्णीयुर्यथांशतः ॥ अन्तर्धनं भूमिनिक्षेपादिना गोपितुं शक्यं सुवर्णरूप्यादि ।
संसृष्टी भिन्नोदरो गृह्णीयात् । भुवं तु सोदरभ्रातरः । गवाश्वादि तु सोदरोऽसोदर
इत्यर्थः ॥ भिन्नोदरः संसृष्टोऽन्य गृह्णाश्वाद्यपीति मदनः ॥ तत्त्वेतद्वचनानारूढम् ॥
अन्तर्धनभूमिगवाद्यन्यतरमात्रसत्त्वे त्वसंसृष्टोऽपि सोदर एवेति स्मृतिचन्द्रिकायाम् ।
तच्च मानं चिन्त्यम् ॥ सोदरेष्वपि केचित्संसृष्टिनः परेतु न तत्राऽपि संसृष्टिन एव
गृह्णीयुः । सोदरत्वसंसृष्टित्वकारणद्वयसद्भावात् ॥ अतएव गौतमः । संसृष्टिनि
प्रेते संसृष्टी रिक्थभागिति ॥ बृहस्पतिः । संसृष्टौ यौ पुनः प्रीत्या तौ परस्पर-
भागिनाविति ॥ अत्रायं निर्गलितोऽर्थः ॥ पुत्रः पित्रा संसृष्टोऽसंसृष्टो वा कृत्स्नं
पित्र्यमंशं गृह्णीयात् । पुत्रत्वस्यैवांशग्रहणाधिकारितावच्छेदकत्वात् ॥ पुत्रेष्वप्येकः
संसृष्टः परो न चेत्संसृष्ट एव । संसृष्टिनस्तु संसृष्टीत्युक्तेः ॥ संसृष्टपुत्रापुत्रसमवाये
पुत्र एव । दद्याच्चापहरेच्चांशमित्यत्र व्याख्यातत्वात् ॥ पुत्रभिन्नसंसृष्टपितृभ्रातृ-
पितृव्यादीनां समवाये पितरावेव ॥ तत्राप्यादौ माता ततः पितेति मदनः ॥
भ्रातृपितृव्यादयस्तु विभज्यैव गृह्णीयुः । सर्वेषु संसृष्टत्वरूपग्रहणाधिकारितावच्छेदक-
सद्भावात् ॥ असंसृष्टभ्रातुः संसृष्टपितृव्यसापत्नभ्रात्रादीनां च समवायेऽपि विभज्यैव ।
असंसृष्ट्यपि चादद्यात्संसृष्टो नान्यमातृजः । संसृष्टिनस्तु संसृष्टी सोदरस्य तु सोदर
इत्युक्तेः ॥ विवाहायाः पत्न्या एव संसृष्टत्वे सैव गृह्णीयात् । संसृष्टिनस्तु संसृष्टीत्युक्तेः ॥
संसृष्टयापि तया सहान्येषां संसृष्टिनां समवाये त एव न सा ॥ तथा च संसृष्टिप्रक्रमे
शङ्खनारदौ । भ्रातॄणामप्रजाः प्रेयात्कश्चिच्चेत्प्रव्रजेत वा । विभजेरन्धनं तस्य शेषास्ते
स्त्रीधनं विना ॥ भरणं चास्य कुर्वीरन्स्त्रीणामाजीवनक्षयात् । रक्षन्ति शय्यां
भर्तुश्चेदाच्छिन्द्युरितरासु तु ॥ या तस्य दुहिता तस्याः पित्र्योंशाद्भरणं मतम् ।
आसंस्काराद्भरेद्भागं परतो बिभृयात्पतिः ॥ अत्र यथा यस्य हविर्निरुप्तं पुरस्ताच्चन्द्रमा
अभ्युदियात्स त्रेधा तण्डुलान्विभजेदित्यत्र हविरभिन्न उदियादित्यनेनैव हविःप्रहत्यवग-
माग्निर्वापाविवक्षा तथा प्रक्रमादेव मरणप्रव्रज्याविभागादिषु संसृष्टिनां कर्तृत्वा-
वगमाद्भ्रातॄणामित्यविवक्षितम् ॥ यत्तु संसृष्टिक्रमे शङ्खः स्वर्यातस्य ह्यपुत्रस्य भ्रातृगामि
द्रव्यं तदभावे पितरौ हरेयातां ज्येष्ठा वा पत्नीति तद्येन पितृव्यभ्रातृपुत्रसापत्नभ्रात्रा
सह संसर्गस्तन्मरणोत्तरं संसृष्टिमरणे तदीयासंसृष्टिभ्रात्रादीनां क्रमनियमार्थमिति
मदनः ॥ तत्राप्यादौ माता ततः पितेत्यपि स एव ॥ ज्येष्ठा संयता ॥ पत्न्यभावे
भगिनी ॥ तथा च बृहस्पतिः ॥ या तस्य भगिनी सा तु ततोऽंशं लब्धुमर्हति ।
अनपत्यस्य धर्मोऽयमभार्यापितृकस्य च ॥ केचित्तु या तस्य दुहितेति पेठुः ॥
दुहितृभगिन्योरभावेऽनन्तरः सपिण्डः ॥

॥ अथ स्त्रीधनम् ॥

मनुः । अध्यग्न्यध्यावाहनिकं दत्तं च प्रीतिकर्मणि । भ्रातृमातृपितृप्राप्तं षड्विधं स्त्रीधनं स्मृतम् ॥ षडिति न्यूनसङ्ख्याव्यवच्छेदार्थम् । तेन पितृमातृपतिभ्रातृदत्तमध्यग्न्युपागतम् । आधिवेदनिकाद्यं च स्त्रीधनं परिकीर्तितमिति याज्ञवल्कीयमाद्यपदं संगच्छते ॥ विष्णुराधिक्यमाह । पितृमातृसुतभ्रातृदत्तमध्यग्न्युपागतम् । आधिवेदनिकं बन्धुदत्तं शुल्कान्वाधेयकमिति ॥ अध्यग्न्यादीन्याह कात्यायनः । विवाहकाले यत्स्त्रीभ्यो दीयते ह्यग्निसन्निधौ । तदध्यग्निकृतं सद्भिः स्त्रीधनं परिकीर्तितम् ॥ यत्पुनर्लभते नारी नीयमाना पितुर्गृहात् ॥ अध्यावहनिकं नाम स्त्रीधनं तदुदाहृतम् ॥ प्रीत्या दत्तं तु यत्किञ्चिच्छ्वश्र्वा वा श्वशुरेण वा । पादवन्दनिकं चैव प्रीतिदत्तं तदुच्यते ॥ विवाहात्परतो यत्तु लब्धं भर्तृकुलात्स्त्रिया । अन्वाधेयं तु तत्प्रोक्तं यल्लब्धं स्वकुलात्तथा ॥ गृहोपस्करवाह्यानां दोह्याभरणकर्मणाम् । मूल्यं लब्धं तु यत्किञ्चिच्छुल्कं तत्परिकीर्तितम् ॥ गृहोपस्कराद्यलाभे तन्मूल्यं कन्यादानकाले कन्यायै दत्तं तच्छुल्कमित्यर्थः ॥ आधिवेदनिकं विवृणोति याज्ञवल्क्यः । अधिविन्नस्त्रियै दद्यादाधिवेदनिकं समम् ॥ न दत्तं स्त्रीधनं यासां दत्ते त्वर्धं प्रकल्पयेत् ॥ अर्धमिति यावताधिवेदनिकद्रव्यसमं भवति तावदित्यर्थः ॥ देवलः । भर्त्रा प्रतिश्रुतं देयमृणवत्स्त्रीधनं सुतैः ॥ प्रतिश्रुतं स्त्रियै ॥ स्त्रीभ्यो धनदाने विशेषमाह कात्यायनः । पितृमातृपतिभ्रातृज्ञातिभिः स्त्रीधनं स्त्रियै । यथाशक्त्या द्विसाहस्राद्दातव्यं स्थावरादृते ॥ स्थावरातिरिक्तं सहस्रद्वयपणावधि देयमिति मदनः ॥ व्यासोऽपि । द्विसाहस्रः परो दायः स्त्रिया देयो धनस्य च ॥ इदं च द्विसहस्रावधिकं दानं प्रतिवर्षम् ॥ अनेकवर्षेष्वितोऽधिकमपि शक्तौ स्थावरमपि च देयमित्यपि स एव ॥

दायादवञ्चनेन दत्ते द्रव्ये धारणमात्रार्थं दत्ते च भूषणादौ स्त्रीस्वत्वं नास्तीत्याह कात्यायनः । तत्र सोपधि यद्दत्तं यच्च योगवशेन वा । पित्रा भ्रात्राथ पत्या वा न तत्स्त्रीधनमुच्यते ॥ शिल्पप्राप्ते पित्रादिभिन्नसख्यादिप्राप्तेऽपि स्त्रीधनत्वं नास्तीत्याह स एव । प्राप्तं शिल्पैस्तु यत्किञ्चित्प्रीत्या चैव यदन्यतः । भर्तुः स्वाम्यं तदा तत्र शेषं तु स्त्रीधनं स्मृतम् । यत्तु भार्या पुत्रश्च दासश्च निर्धनाः सर्व एव ते । यत्ते समधिगच्छन्ति यस्यैते तस्य तद्धनमिति तदपि शिल्पाद्यर्जितधनपरम् ॥ आधिवेदनिकादिष्वप्यस्वातन्त्र्यपरमिति तु युक्तम् ॥ अत एव मनुः । न निर्हारं स्त्रियः कुर्युः कुटुम्बाद्बहुमध्यगात् । स्वकादपि च वित्ताद्धि स्वस्य भर्तुरनाज्ञयेति । निर्हारो व्ययः ॥

क्वचिच्च धने स्वातन्त्र्यमाह कात्यायनः । ऊढया कन्यया वापि पत्युः पितृगृहे

ऽथवा। भ्रातुः सकाशात्पित्रोर्वा लब्धं सौदायिकं स्मृतम्॥ सौदायिकं धनं प्राप्य स्त्रीणां स्वातन्त्र्यमिष्यते। यस्मात्तदानृशंस्यार्थं तैर्दत्तमुपजीवनम्॥ सौदायिके सदा स्त्रीणां स्वातन्त्र्यं परिकीर्तितम्। विक्रये चैव दाने च यथेष्टं स्थावरेष्वपि॥ भर्तृदत्ते स्थावरे तु न स्वातन्त्र्यम्। भर्त्रा प्रीतेन यद्दत्तं स्त्रियै तस्मिन्मृतेऽपि तत्। सा यथाकाममश्नीयाद्दद्याद्वा स्थावरादृते इति नारदोक्तेः॥ भर्त्रादीनां स्त्रीधने स्वातन्त्र्याभावमाह स एव। न भर्ता नैव च सुतो न पिता भ्रातरो न च। आदाने वा विसर्गे वा स्त्रीधने प्रभविष्णवः॥ यदि त्वेकतरो येषां स्त्रीधनं भक्षयेद्बलात्। सवृद्धिकं स दाप्यः स्याद्दण्डं चैव समाप्नुयात्॥ तदेव यद्यनुज्ञाप्य भक्षयेत्प्रीतिपूर्वकम्। मूल्यमेव स दाप्यः स्याद्यदा स धनवान् भवेत्॥ मनुः। जीवन्तीनां तु तासां ये तद्धरेयुः स्वबान्धवाः। ताञ्छिष्याच्चौरदण्डेन धार्मिकः पृथिवीपतिः॥ पत्यौ जीवति यः स्त्रीभिरलङ्कारो धृतो भवेत्। न तं भजेरन् दायादा भजमानाः पतन्ति ते इति॥ धृतो भर्त्रादिना तस्यै दत्तः स तया धृत इत्यर्थः॥ देवलः। वृत्तिराभरणं शुल्कं लाभश्च स्त्रीधनं भवेत्। भोक्त्री च स्वयमेवेदं पतिर्नार्हत्यनापदि॥ वृथा मोक्षे च भोगे च स्त्रियै दद्यात्सवृद्धिकम्। पुत्रार्तिहरणे वापि स्त्रीधनं भोक्तुमर्हति॥ वृत्तिर्जीवनार्थं पित्रादिदत्तं धनम्। लाभो वृद्धिः। मोक्षस्त्यागो दानमिति यावत्। पुत्रपदं कुटुम्बोपलक्षकम्॥ याज्ञवल्क्यः। दुर्भिक्षे धर्मकार्ये च व्याधौ सम्प्रतिरोधके। गृहीतं स्त्रीधनं भर्ता नाकामो दातुमर्हति॥ अत्र भर्तृग्रहणात्तद्भिन्नेन दुर्भिक्षाद्यापद्यपि स्त्रीधनं न ग्राह्यमित्युक्तम्। धर्मकार्यमावश्यकम्। सम्प्रतिरोधके बन्धने॥ क्वचिदकामो दद्यादित्याह देवलः। अथ चेत्स द्विभार्यः स्यान्न च तां भजते पुनः। प्रीत्या निसृष्टमपि च पतिर्दाप्यश्च तद्बलात्॥ ग्रासाच्छादनवासानामाच्छेदो यत्र योषितः। तत्र स्वमाददीत स्त्री विभागं रिक्थिनस्तदा॥ रिक्थिनः सकाशादित्यर्थः॥ इदं च साध्वीपरम्। दुष्टा तु न विभागमर्हति॥ तथा च स एव। अपकारक्रियायुक्ता निर्मर्यादार्थनाशिका। व्यभिचाररता या च स्त्रीधनं न च सार्हति॥ स एव। यज्ञार्थं द्रव्यमुत्पन्नं तस्माद्द्रव्यं नियोजयेत्। स्थानेषु धर्मयुक्तेषु न स्त्रीमूर्खविधर्मिषु॥

स्त्रीमरणोत्तरमन्वाधेयाद्युक्तधनग्रहणेऽधिकारिव्यवस्थामाह मनुः। अन्वाधेयं च यद्दत्तं पत्या प्रीतेन चैव यत्। पत्यौ जीवति वृत्तायाः प्रजायास्तद्धनं भवेत्॥ प्रजां विशिनष्टि स एव। जनन्यां संस्थितायां तु समं सर्वे सहोदराः। भजेरन् मातृकं रिक्थं भगिन्यश्च सनाभयः॥ यत्र दुहित्राद्यभावेन पुत्राणामेव साहित्येनाधिकारः प्राप्तस्तत्र तत्साहित्यम्। यत्र तु कन्यानामेवाधिकारः प्राप्तस्तत्र तत्साहित्यमनूद्यते।

न तु कन्यापुत्रयोः परस्परमप्राप्तं साहित्यं विधीयत इति मिताक्षराशयः ॥ परे त्वन्वाधेयभर्तृप्रीतिदत्तविषये कन्यापुत्रयोरपूर्वंसाहित्यं विधीयत इत्याहुः ॥

भगिनीषु विशेषमाह मनुः । स्त्रीधनं स्यादपत्यानां दुहिता च तदंशिनी । अप्रत्ताचेत्समूढा तु लभते मानमात्रकम् ॥ तदंशिनी पुत्रसमांशिनी । अप्रत्ताऽविवाहिता । तस्याः सत्त्वे ऊढा मानमात्रं किञ्चिन्मात्रं लभत इत्यर्थः ॥ अप्रत्ताऽभावे सधवानां भातृसमोंऽशः । भगिन्यो बान्धवैः सार्धं विभजेरन् सभर्तृका इति कात्यायनोक्तेः ॥ दौहित्रीभ्योऽपि किञ्चिद्देयम् । यास्तासां स्युर्दुहितरस्तासामपि यथार्हतः । मातामह्या धनात्किञ्चित्प्रदेयं प्रीतिपूर्वकमिति मनूक्तेः ॥

यौतकं त्वनूढानामेव न पुत्राणाम् ॥ तथाच स एव ॥ मातुस्तु यौतकं यत्स्यात् कुमारीभाग एव सः ॥ यौतकं विवाहादिसमये पत्या सहैकासने प्राप्तं युतयोर्यौतकमिति निघण्टूक्तेरिति मदनः ॥

अन्वाधेयभर्तृप्रीतिदत्तभिन्ने पूर्वोक्ते पारिभाषिके स्त्रीधने तु विशेषमाह गौतमः । स्त्रीधनं दुहितॄणामप्रत्तानामप्रतिष्ठितानां चेति ॥ अप्रतिष्ठिता निर्धनाः ॥ ब्राह्मी कन्या तु सपत्नीमातुरपि धनं गृह्णीयादित्याह मनुः । स्त्रियास्तु यद्भवेद्वित्तं पित्रा दत्तं कथंचन ॥ ब्राह्मणी तद्धरेत्कन्या तदपत्यस्य वा भवेत् ॥ वाकारश्चार्थे तेन विभज्येति लभ्यते ॥ ब्राह्मणीपदं समोत्तमजातिकन्योपलक्षकमिति केचित् ॥ मानं तु तत्र चिन्त्यम् ॥

दुहितॄणामभावे दुहितृसन्ततिः ॥ मातुर्दुहितरोऽभावे दुहितॄणां तदन्वय इति नारदोक्तेः ॥ भिन्नमातृकाणां दुहितॄणां दौहित्राणां चानेकपितृकाणां भागकल्पनेति न्यायेनाशकल्पना ॥ यत्तु याज्ञवल्क्यः मातुर्दुहितरः शेषमृणात्ताभ्य ऋतेऽन्वय इति तत्राप्यन्वयपदं कन्यासन्ततिपरमिति केचित् ॥ परे तु दुहित्रभावे एव गृह्णीयुः नारदीये तदा मातुरेव परामर्शादित्याहुः ॥ आचारसंवादी चायं पक्षः ॥ शेषमृणादिति ऋणसमं तन्न्यूनं वा पुत्रा एव गृह्णीयुरिति साम्प्रदायिकाः ।

दुहित्रादीनामभावे पुत्रपौत्राद्या गृह्णीयुः ॥ दुहितॄणामभावे तु रिक्थं पुत्रगामि इति कात्यायनोक्तेः ॥ अयं दुहित्रादीनां मातृधनाधिकारोऽध्यग्न्यध्यावाहनिकमित्यादिपूर्वोक्तपारिभाषिकस्त्रीधन एव ॥ मातृस्वामिकधनमात्रपरत्वे परिभाषावैयर्थ्यम् ॥ तेन स्त्रीधनं स्यादपत्यानाम् स्त्रीधनं दुहितॄणामित्यादीनि पूर्वोक्तानि स्त्रीधनपदवन्ति बृहस्पतिगौतमादिवचनानि पारिभाषिकपराण्येव ॥ यानि स्त्रीधनपदाभावेऽप्येकार्थकानि भजेरन्मातृकं रिक्थमित्यादीनि तान्यपि तत्पराण्येव । एकमूलकल्पनालाघवात् ॥ यत्तु विभजेरन्सुताः पित्रोरूर्ध्वं रिक्थमृणं सममि

याज्ञवल्क्योक्तं तत्पारिभाषिकातिरिक्तविभागकर्त्तनादिलब्धपरम् ॥ तेन पारिभाषिकातिरिक्तं मातृधनं दुहितृसत्त्वे पुत्रादय एव लभेरन् ॥

उभयविधसन्तत्यभावे तु पारिभाषिकस्त्रीधनं प्रकृत्य विशेषमाह याज्ञवल्क्यः । अतीतायामप्रजसि बान्धवास्तदवाप्नुयुः ॥

विवाहभेदेन बान्धवव्यवस्थामाह स एव । अप्रजस्त्रीधनं भर्तुर्ब्राह्म्यादिषु चतुर्ष्वपि । दुहितृणां प्रसूता चेच्छेषेषु पितृगामि तत् ॥ भर्तुरभावे तत्कुले तस्याः प्रत्यासन्नो लभते पित्रभावे च पितृकुले तस्याः प्रत्यासन्नः । अनन्तरः सपिण्डाद्यस्तस्य तस्य धनं भवेदिति मनुना सतनिरूपितायाः एव प्रत्यासत्तेर्धनाधिकारितावच्छेदकत्वेनाभिधानात् ॥ यत्तु मिताक्षरायाम् भर्त्रभावे तत्प्रत्यासन्नानां सपिण्डानां पित्रभावे च तत्प्रत्यासन्नानां सपिण्डानामिति तथापि तेनास्याः प्रत्यासन्नास्तत्प्रत्यासन्नास्तद्द्वारा तत्कुले प्रत्यासन्ना इति यावदित्येवं व्याख्येयम् ॥ ब्राह्म्यादिषु चतुर्ष्वपीति विप्रपरम् ॥ तेषामेव तंप्रति धर्म्यत्वात् ॥ यस्य तु क्षत्रियादेर्गान्धर्वोऽपि धर्म्यस्तस्य तदूढाधनमपि भर्तुरेव ॥ तथा च मनुः । ब्राह्मदैवार्षगान्धर्वप्राजापत्येषु यद्वसु । अतीतायामप्रजसि भर्तुरेव तदिष्यते ॥ यत्त्वस्याः स्याद्धनं दत्तं विवाहेष्वासुरादिषु । अतीतायामप्रजसि मातापित्रोस्तदिष्यते ॥

ब्राह्म्यादिविवाहेषु भर्तुरभावे आसुरादिषु च पित्रोरभावे पारिभाषिकस्त्रीधनेऽधिकारिण [illegible] बृहस्पतिः । मातृष्वसा मातुलानी पितृव्यस्त्री पितृष्वसा । श्वश्रूः पूर्वज[illegible] [illegible]तुल्याः प्रकीर्तिताः ॥ यदासामौरसो न स्यात्सुतो दौहित्र एव [illegible]त्सुतस्तयोरेव धनं तासां स्वस्रीयाद्याः समाप्नुयुः ॥ [illegible]दौहित्रयोरप्य[illegible] [illegible]ध्यः । तदभाव एवौरसदौहित्रयोरधिकारात् ॥

[illegible] आसुरादिविवाहेषु बन्धुदत्तेषु कात्यायनः । बन्धुदत्तं तु बन्धूनामभावे पुत्र-[illegible] तत् ॥

[illegible]विषये तु गौतमः । भगिनीशुल्कं सोदर्याणामूर्ध्वं मातुरिति ॥ यत्तु शङ्खः [illegible] च स्वयंवोढेति अविवाहात्प्राक् मृतायां बोध्यम् ॥ अत्र विशेषमाह याज्ञवल्क्यः । [illegible] दत्त्वादत्तं तत्परिशोध्योभयव्ययम् ॥ पूर्वं दत्तं शुल्कं मृतायां कन्यायां तस्य [illegible]थाः पितुश्च व्ययादवशिष्टं भर्ता गृह्णीयादित्यर्थः ॥ क्वचिद्विशेषमाह बौधायनः ॥ [illegible]क्थं मृतायाः कन्याया गृह्णीयुः सोदराः समम् । तदभावे तु तन्मातुस्तदभावे [illegible]तुर्भवेदिति ॥ इदं विवाहात्प्राक् मृतायां वाग्दानकालीनमातामहादिदत्तालङ्कारादिविषयमिति साम्प्रदायिकाः ॥

॥ अथानंशाः ॥

याज्ञवल्क्यः । क्लीबोऽथ पतितस्तज्जः पङ्गुरुन्मत्तको जडः । अन्धोऽचिकित्स्यरोगश्च भर्तव्याः स्युर्निरंशकाः ॥ तज्जः पतितोत्पन्नः । विभागोत्तरमौषधादिना पङ्ग्वादियुक्तास्त्वंशं लभन्त एव विभक्तोत्पन्नवत् ॥ मनुः । अनंशौ क्लीबपतितौ जात्यन्धबधिरौ तथा । उन्मत्तजडमूकाश्च ये च केचिन्निरिन्द्रियाः ॥ निरिन्द्रिया घ्राणादिरहिता ॥ नारदः । पितृद्विट् पतितः षण्ढो यश्च स्यादपपात्रितः । औरसा अपि नैतेंऽशं लभेरन् क्षेत्रजाः कुतः ॥ दीर्घतीव्रामयग्रस्ता ये जडोन्मत्तपङ्गवः । भर्तव्याः स्युः कुलस्यैते तत्पुत्रास्त्वंशभागिनः ॥ अपपात्रितः राजद्रोहाद्यपराधेन बन्धुभिर्घटस्फोटादिना बहिष्कृत इति मदनः । व्यवसायार्थं नावादिना समुद्रमध्ये द्वीपान्तरं गन्तेति न युक्तम् । द्विजस्याब्धौ तु नौयातुः शोधितस्याप्यसङ्ग्रह इति तस्य कलौ संसर्गनिषेधात् । राजद्रोहादौ घटस्फोटबहिष्कारयोरविधानाच्च ॥ शङ्खलिखितौ । अपपात्रितं रिक्थपिण्डोदकानि व्यावर्तन्त इति ॥ वसिष्ठः । अनंशास्त्वाश्रमान्तरगता इति ॥ नैष्ठिकब्रह्मचारिवानप्रस्थयतय इत्यर्थः ॥ कात्यायनः । अक्रमोढासुतश्चैव सगोत्राद्यश्च जायते । प्रव्रज्यावसितश्चैव न रिक्थं तेषु कर्हिचित् ॥ सगोत्रादिति सगोत्रेणोढायां तस्माज्जात इत्यर्थः । अक्रमोढासुतः क्षेत्रजकानीनादिरिति केचित् ॥ ज्येष्ठायां कन्यायामपरिणीतायां कनिष्ठा कृतविवाहा चेत्तदा ते द्वे अपि अक्रमोढाशब्देनोच्येते इति तु युक्तम् ॥ तस्य पितृसवर्णत्वेंऽशभाक्त्वमाह स एव ॥ अक्र ... कथं सवर्णश्च यदा पितुः । असवर्णाप्रसूतश्च क्रमोढायां च यो भवेत् ॥ ... भर्त्राप्युत्पन्नः पुत्रो नांशभाक् ॥ तथा च स एव । प्रतिलोमप्र... रिक्थभाक् । ग्रासाच्छादनमत्यन्तं देयं तद्बन्धुभिर्मतं

गुणवत्पुत्रान्तरसत्त्वे दुर्वृत्तस्यांशानर्हतामाह मनुः । ... भ्रातरो धनमिति ॥ बृहस्पतिः । सवर्णजोऽप्यगुणवान्नार्ह... पिण्डदाः श्रोत्रिया ये तेषां तत्तु विधीयते ॥ उत्तमर्णाधमर्णे... अतस्तु विपरीतेन तेन नास्ति प्रयोजनम् ॥

एते चानंशा रिक्थग्राहिभिर्यावज्जीवं पोषणीयाः ... अपि तु न्यायं दोषकृता मनीषिभिः । ग्रासाच्छादनमत्यन्तं पतितो ह्यददद्भवेदिति मनूक्तेः ॥ अत्यन्तं यावज्जीवम् । भर्तव्यास्ते निरंशका इति पूर्वोक्तयाज्ञवल्क्योक्तेश्च ॥ आश्रमान्तरगतपतिततत्पुत्रास्तु न भर्तव्याः ॥ तथा च वसिष्ठः । अनंशास्त्वाश्रमान्तरगताः क्लीबोन्मत्तपतिताश्च ॥ भरणं क्लीबोन्मत्तानामिति ॥ अत्र द्वयोर्भरणे श्रवणमितरयोः

परिसंख्यार्थम् ॥ देवलः । मृते पितरि न क्लीबकुष्ठ्युन्मत्तजडान्धकाः । पतित-स्तदपत्यं च लिङ्गी दायांशभागिनः ॥ तेषां पतितवर्ज्येभ्यो भक्तवस्त्रं प्रदीयते ॥ लिङ्गी निषिद्धलिङ्गधारी ॥ बौधायनः । अतीतव्यवहारान् ग्रासाच्छादनैर्बिभृयुरन्धजड-क्लीबव्यसनिव्याधितांश्चाकर्मिणः. पतिततज्जवर्जमिति ॥ सन्न्यासच्युततत्पुत्रावपि न भरणीयाविति मदनादयः ।

अनंशपुत्रास्तु निर्दोषा भागं लभन्त एव ॥ तेषामेवौरसाः पुत्रा भागहारिणो न तु पतितस्य पतनीये कर्मणि कृतेऽनन्तरोत्पन्नाः प्रतिलोमासु स्त्रीषूत्पन्नाश्चाभागि-नस्तत्पुत्राः पैतामहेऽप्यर्थे इति विष्णूक्तेः औरसाः क्षेत्रजास्तेषां निर्दोषा भागहारिण इति याज्ञवल्क्योक्तेश्च ॥

तत्कन्यासु पत्नीषु च विशेषमाह याज्ञवल्क्यः । सुताश्चैषां प्रभर्तव्या यावद्वै भर्तृसात्कृताः ॥ अपुत्रा योषितश्चैषां भर्तव्याः साधुवृत्तयः । निर्वास्या व्यभिचारिण्यः प्रतिकूलास्तथैव च ॥ व्यभिचारे बहिर्निष्कासनमपोषणं च । प्रातिकूल्ये बहिर्निष्का-सनमेव । भरणं तु कार्यमेवेति मदनादयः ॥

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भागवती तरङ्गिणी शुभसङ्गमस्य सान्निध्यभाजि कृतशालिनि मध्यदेशे । ख्याता भरेह नगरी किल तत्र राजा राजीवलोचनरतो भगवन्तदेवः ॥

[illegible] सेंगरवंशावतंसमहाराजाधिराजश्रीभगवन्तदेवादिष्टश्रीजगद्गुरुभट्टनारायण-[illegible] सूनुमीमांसापारावारपारीणधुरीणभट्टशङ्करसूनोर्भट्टनीलकण्ठस्य कृतौ [illegible] तदेतत् [illegible] समाप्तः ॥

[illegible]

[illegible]

VIVADA TANDAVA.

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Having made obeisance to his father Ram Krishna and his mother Uma, Kamalakara determines positive law.

* * * * *

DAYABHAGA.

The chapters on partition are omitted as there is nothing new in them and they agree in the main with the Mitakshara.

SUCCESSION TO THE ESTATE OF A SONLESS MAN.

Yajnavalkya says: "the lawfully wedded wife and the daughters also, both parents, brothers likewise and their sons, gentiles, cognates, a pupil and a fellow student, on failure first among them, the next in order is the heir to the estate of one who departed for heaven, leaving no male issue. This rules extends to all classes." **Right of the widow.**

In this the truth is that if an undivided or reunited coparcener dies, his share, the undivided or reunited coparceners beginning with the brother obtain. Thus if one dies unseparated from his mother, the mother obtains the whole, because when one dies the right of the other accrues. The widow however gets the property only for her life. The enti[illegible] estate including immovables of the separated unreuni[illegible] person deceased without any primary son, grandson or gr[illegible] grandson and without any subsidiary son, is ta[illegible] widow who had been married according to [illegible] the Brahma, after paying out of it sufficient t[illegible] for life of the husband's grandmother, and w[illegible] daughters-in-law who should be maintained lik[illegible] disqualified heirs like the impotent, as other[illegible] for mentioned, and also after paying out of it, wealt[illegible] the marriage of step-daughters. This has been menti[illegible] The succession to Stridhana will be mentior[illegible] If there are more than one widow, they take b[illegible]r, from the Smriti that the affix *no* in the word *Patni* den[illegible]nnection with sacrifice. This happens when there are no primary or subsidiary sons. Manu says: "A widow who has no male issue, who keeps the bed of her lord unsullied and who strictly performs the duties of widowhood shall alone offer the cake at his obsequies and succeed to his entire share." In her default the heirs beginning with the daughter take. This rules applies to all classes superior or inferior.

Next cites texts of Vrihaspati, Vasista, Harita, Vishnu, Katyayana and Vyasa which will be found collected among others in the first volume and which have been translated several times in this volume in the other treatises. They are therefore omitted.

As regards the text of Katyayana: "if the husband is dead, she who maintains the family shall receive her husband's share during her lifetime. Proprietorship does not entitle her to make a gift, mortgage or sale," according to Vijnaneswara it refers to women shut up, or wives of the same caste married according to disapproved forms like the Asura. The Gauras however say that the right of the widow is to enjoy for life immovable property and the like in which she has no independent power to make a gift or sale and the like without the permission of the Dayadas, from the text of Katyayana: "Let the sonless widow preserving unsullied the bed of her lord and steadfast in her continence enjoy with moderation the property till her death: after her let the heirs take it." But she can make a gift or sale and the like for the purpose of obsequial ceremonies of her husband from the text (of Vriddha Manu); "the widow shall alone offer the Pinda, &c." The text of Narada "kinsmen divided or undivided have an equal claim to immovable wealth" refers, they say, to the immovable property inherited by the widow of a divided coparcener. Gimutavahana is of the same opinion. This text is not to be found in Apararka, Madana Ratna, Madhaviya and others and is therefore without any basis. If there be any basis, ...is refers to wives married according to disapproved forms ...to wives of undivided coparceners or to unchaste women but ... to lawful wives, from the text of Harita: "A widow who ... she becomes untractable should be given ...eserving her life." Therefore the decision ... is ordained and prohibited is that the ...atyayana refers to the lawful widow of a ...ner. When the rule is (as subsequently stated) ... death of her mother, the daughter and the rest ...d not of their right independent of her, if she does ...d, the rule of succession becomes meaningless. ...fe gets during the lifetime or after the death of ...he ... n when there is a son, a share equal to that of the son, ... can it be said that she will not get his share on his dying (sonless)?

As regards the text of Vrihaspati cited in the Smriti Chandrika: "the husband being separated (in interest from his coparceners) his wife shall take after his death a pledge and whatever else is recognized as property, excepting the immovable wealth; a wife though preserving her character and though partition have been made is

unworthy to obtain immovable property," it is without authenticity and (if authentic) refers only to a wife married according to a disapproved torm like the Asura or to a case when a person separated without a son and afterwards has no separated son dies leaving immovable property acquired by the father, otherwise there would be conflict with the text "except the bipeds and other animals and the immovable property." There is also the want of the term Patni in the text. According to Madan Ratna it refers to a widow having no daughter. The Chandrika says that that is a proper rule. But it is improper as it is without basis. The widow has absolute power over immovables, as mentioned before, with the assent of the Dayadas but without such assent she has no independent power from the text: "kinsmen whether divided or undivided have an equal interest" as is laid down by Madhavacharya.

The following text is cited in the Mitakshara: "Wealth is made for sacrifice. Those that are incompetent to perform them are not entitled to maintenance. Wealth is for sacrifice. Therefore it should go to a proper person and virtuous and not to a woman, ignorant man or an apostate." A man's entire property should be devoted for sacrifices but in that case, gift, Sraddha and livelihood become impossible and therefore a price in gold is substituted. On account of the objection of the rule of Nyaya that wealth is for temporal purposes of the person, the above text refers only to the wealth devoted to sacrifices and not to all property, from the text "when person does not spend in gifts property received for sacrifices he becomes a kite or a crow." So says Vijnaneswara.

Again considerable wealth cannot be considered only required for maintenance. So say Madan Ratna Vijnaneswara. Apararka, however, cites "when formerly divided are again living togeth and arrange a second division the right not accrue in that case. When any o die or any how renounce the world not lost: it is allotted to his uterine brother. sister she is entitled to half of the share. regarding (the wealth) of one destitute of issue no wife or father. If among reunited copar should acquire property through learning. like a double share should be given to rest sh take equal shares." This text of Vrihaspati refers to the wife of a reunited coparcener. It may also refer to a wife married according to disapproved forms like the Asura. It should be known that there is the prihibition "the share of the reunited does not belong to her according to the learned." When there is no uterine brother the sister's right accrues. So says Apararka. Gimutavahana and his

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followers say from this text that the widow of the undivided coparcener takes his share. That is not correct because that would conflict with the text of Narada cited in the Mitakshara: "The share of the reunited does not belong to her according to the learned."

As regards the undivided coparceners there is the conflicting text of Katyayana cited in the Madana Ratna. On the husband dying, the wife is entitled to maintenance. " But she gets the share of the undivided wealth till her death." Therefore others say that in the case of the reunited that is an alternative rule. In case of a wife of a superior caste she is entitled to share but in the case of the wife of equal or inferior caste she is not so entitled.

Kamalakara next cites the anamolous texts of Sankha, Manu (9 v 185) Katyayana and Devala in which the widow is either denied her right or postponed to other heirs which are all to be found in Ch. II, Sec. 5 of the first volume and repeatedly cited in the other commentaries appearing in this volume. Kamalakara explains them as only mentioning the heirs and not laying down the order of succession.

Duties and right of gift of the widow.

Vyasa: "On the death of the husband, the virtuous wife leading the ascetic life, after bathing every day should offer oblations of water to her own husband, should also worship Vishnu always after fasting, should make gift to good Brahmins for the increase of merit, should make various fasts which are enjoined by the Shastras. O Goddess of the excellent face' woman always performing religious acts, saves her departed husband and also herself." (From the ...e text) Vyasa and other (sages) have enjoined gifts ... the widow) and this does not refer to Stridhana as ...se the words 'on the death of the husband' would

... when there has been no partition, ...wn the rule thus). "The virtuous wife ...s dead is entitled to be provided with food by the elder brother of the deceased or by ...law or by another Gotraja." Vijnaneswara and ...at this applies also to the reunited, but not ...as and others. In the Madana Ratna Katyayan... here lays down the following rule even in case of division respecting the widow if she is disobedient to her Gurus: "she who is delighted in the service of her father-in-law and the like is entitled to enjoy her appointed share; if she will not do them service, raiment and food only shall be appointed. She who does injurious acts is shameless or wastes property or is unchaste does not deserve Stridhana."

In case of an unchaste wife she is not entitled to maintenance as is mentioned in the text "her maintenance shou'd be withdrawn." As regards the text: "this rule applies to outcasted (Patita) women; they should be provided with raiment and food and should reside near the (family) house," it applies to the husband and to the husband's younger brother and the like (after his death).

Unchaste widow deprived of all rights.

The widow (of a) divided (coparcener) who is chaste is entitled to the entire inheritance. Thus ends of the chapter on the right of the widow.

In default of the widow the daughter inherits from the text of Manu "A son is even as one's self, a daughter is equal to a son; how can another take the estate while one's self lives?" Narada also says "On failure of son the daughter succeeds because she continues the lineage just like a son. The son and the daughter both continue the lineage of the father." Vrihaspati says: "A daughter like a son springs from each member of a man. How then should any other person inherit her father's property while she lives."

Right of the daughter.

In the case (of daughter's succession) the unmarried one takes first from the following text of Katyayana. "The widow if chaste takes the wealth of the husband; failing her, the daughter, if she is unmarried."

In her default the married daughter takes from the following text of Parasara cited by Gimutavahana. "The wealth of one dying sonless is taken by the maiden daughter and in her default by one married." Among the married daughters, the poor one (alone) takes from the text of Gautama: "Belongs to the unmarried daughters and to p[oor] daughters." By parity of reasoning and from texts [this] rule (though in terms applicable to the maternal estate) [applies] also to the paternal estate.

In default of the daughter, the ... heir. Vishnu: "Son's son and daughter's ... perform the Sraddha of the ancestors."

Vrihaspati: "As her father's wealth becomes ... though kinsmen be in existence, even so her s[on] ... the owner of his mother's and maternal grandfat[her's] ..."

Manu: "The daughter's son takes ... wealth of the sonless man. He offers two Pin[das] ... to the father and one to the maternal grandfather. There is no difference in this world between a son and a daughter's son. Of the two the father and the mother were produced from the body (of the deceased). Through that son whom a daughter, either not appointed or appointed, may produce to a husband of equal caste, his maternal grandfather has a son's son; he shall present the funeral cake and take the estate."

Right of the mother and father.

In default of the daughter's son, the mother takes first and after her the father. Vijnaneswara says that in the formation of the compound word Pitarau by Ekshesha Dvanda, the word mother comes first and because the father may be common to other sons but the mother cannot be a common parent. In the Madana Ratna and others from the text of Vishnu and Katyayana cited before, priority of the father is mentioned from the order as laid down in the texts. Gimutavahana is of the same opinion. (But the mother is to be preferred) from the saying "the mother excels the father hundred times in respect, and also from the text "among these the mother is the best."

"The seed is better than ovum" this text of Manu and also the text "the ovum is superior to the seed" refer to right in cattle, horses and the like and does not refer to succession. Apararka says in reality the father's right being first the mother's right appears to be subsequent. But in truth in the word Pitarau the words mother and father having been found in Ekshesha Dvanda and because otherwise there will be violation of the rule "after the prior heir the next in order takes" and because the word is dual in number and the mother comes before the father, the Dvanda being proper. Therefore in the verse "we bow to the parents, Parvati and Parameswara," the mother is first mentioned.

Mother takes before father.

As regards the text of Manu "if the mother be dead, the paternal grandmother shall take the estate," it is mentioned there that in default of the mother, the right of the patenal grandmother is mentioned but that being opposed to the ... ttled textual order, should be considered as taking effect r the brother's son.

"Brothers" (as in the text of Yajnavalkya next take). ... uterine take first and after them the half ... the difference in mothers, from the text of ... n who is nearest to the deceased Sapinda, ... long." In default of brothers, the brother's ... ong them also the sons of the uterine brother ... the texts of Vishnu and others the textual to sons of fathers of different castes. (The rule ... n the text (of Vrihaspati): "in default of them, ... and brothers' sons, Sakulyas, Bandhavas, pupils, or lear... mins are entitled to the inheritance." The word "th... ers to the daughter's son and father. Viswarupa, Bho... a and Govind Raja are of the same opinion. There are some however who, from the grammatical rule that the words sister and daughter which form Ekshesha Dvanda, in the word brothers (in the text of Yajnavalkya) sisters are included for the purpose of indicating offspring. They are ignorant men. If there is Eksheha, brothers and sisters being included in the same word and there being no priority mentioned,

there would be the objection of their being entitled equally. By virtue of the word "their sons" (in the text) there would also be the objection that the sister's sons and brother's sons would divide the inheritance together. There is also the objection that there is separate mention in the partition of reunited coparceners that "uterine sisters" (divide together) and also the (text) "sisters from their own share" (should be given one fourth) would be meaningless.

Before the brothers divide, if one of them had died before, his sons take the share which their father would have taken if living.

In default of the brother's sons, the Gotrajas take. Among them the first is the paternal grandmother.

In the text of Vrihaspati cited in the Aparaka: "When there are several Jnatis, Sakulyas and Bandhavas, whosoever of them is nearest shall take the wealth of him who died leaving no issue," Jnatis mean Sapindas, Sakulyas mean Samanadokas and Bandhavas mean heirs beginning with the father's sister's son. The rule is on account of the text "always to that relative who is nearest to the deceased Sapinda, &c." Grand mothe takes after th brother's son

When the Sapindas succeed as none can intervene in the textual order of the claim of heirs beginning with the widow, other heirs not mentioned there must come at the end of the chain. From the text of Manu: "mother shall obtain the inheritance of a son who died without leaving issue, and if the mother be dead, the paternal grandmother shall take the estate" the paternal grandmother succeeds after the brother's son avoiding all conflict.

In her default, according to the same mode of argumen paternal grandfather, the paternal uncle, h [illegible] default, the great-grandmother, the great-g[illegible] thus up to the sixth degree Sapindas take. [illegible] Samanodokas are heirs from the aforesaid te[illegible] they are indistinguishable from Gotrajas. The [illegible] Sapindas, they are separately mentioned as [illegible] different Gotra. Sodokas (or Samanodakas) are [illegible] by Vriddha Manu: "Sapinda-relationship ce[illegible] seventh male; and the Samanodoka relation [illegible] the fourteenth; some say, with the remem[illegible] birth and name. Beyond that it is called Gotra"; [illegible] the origin and name are unknown.

On failure of Samanodokas, Bandhus are heirs. They are of three kinds as is thus described in another Smriti: "The sons of his own mother's sister and the sons of his own maternal uncle are known as his own Bandhus." By substituting 'father' for 'his own' we get the father's Bandhus.

By substituting the word mother we get the mother's Bandhus. There also one's own Bandhus take first and in their default the father's and mother's Bandhus, on account of nearness of relationship says, Vijnaneswara.

Apararka however says: "Regarding father's and mother's Bandhus, the word Bandhu is affixed to the words (father and mother) and it is not right to include them among Bandhus because the word Bandhu appears in (their construction). In the matter of impurity from the text "father's Bandhus, mother's Bandhus and the ruler of the province, &c.," there is distinction made between one's own Bandhus and the father's and mother's Bandhus. The primary and the secondary should not be taken simultaneously. When the primary object is made impossible then can the secondary object be taken and if the secondary be taken simultaneously, it would conflict with the rule that it can be taken when the primary object is impossible. If the relationship of one's own can be attached in this manner to others, the relationship of a disciple can likewise be attached. Therefore only one's own Bandhus should be regarded as heirs."

Other heirs.

In default of Bandhus, the preceptors and in his default, the pupil takes from the order in the sutra of Apastamba. "On failure of sons, the nearest Sapinda. On failure them, spiritual teacher. On failure of the spiritual teacher, a pupil shall take (the wealth)." On failure of the pupil, the fellow-student takes. In his default, other learned Brahmins take from the text of Gautama: "a learned Brahmin takes the wealth of a [illegible]dless Brahmin" and also from the text of Manu: "In [illegible]lt of all heirs Brahmanas take the wealth." Narada also [illegible] "On the death of a Brahmana when there are no heirs, [illegible] the given to a Brahmana, otherwise sin [illegible] And from the text of Manu: the pro- [illegible] must never be taken by the king, that is [illegible] property of men of other castes the king [illegible] of all heirs." Devala says: "All heirless [illegible]ng takes, excepting the property of a Brahmana. [illegible] heirless property of a Brahmana to learned [illegible]

[illegible] "And he who inherits the wealth presents the funer[illegible]." He who takes one's wealth should pay his debts and give maintenance to those who should have been supported by him," from the text of Gautama: "they who take one's wealth should pay his debts." Manu also says: "The maintaining of those who should be supported is the broad way to attain to heaven. One goes to hell, if he gives them pain; therefore they should be sedulously maintained." Also from the text of Narada. "the women and servants should be

(maintained) and his funeral ceremonies (performed)," the conclusion is arrived at.

This finishes succession to the estate of a sonless man.

The Chapter on Succession to ascetics is similar to that of Mitakshara and is omitted as unimportant.

REUNION.

The Chapter on Reunion consists of discussions of texts of which enough has appeared before. The concluding paragraphs which embody the author's own opinion are only inserted.

On this matter the true doctrine is that the words "of the reunited" are premised by the "sonless" and therefore the reunited dying his son reunited and born after partition as well as the separated son takes first In their default, even the unreunited grandson and the like take and not any other reunited coparcener from the text of Manu: "But a son born after partition shall alone take the property of his father, or if any be reunited with (the father) he shall share with them," in which the succession of the son born after partition is mentioned as taking place with other reunited coparceners and from the text (of Vrihaspati) "this is the law regarding one destitute of issue, wife or father" and from the superiority of son, grandson and the like. As there is no distinction in their case, the widow also inherits and the mother also takes an equal share. Succession reunion

On failure of son and the like, the father and like take. After them, the widow takes. That is declared in the [illegible] "this is the law regarding one destitute of issue and wh[illegible] no wife or father." This law, means of succession of br[illegible] Failing her, the uterine brother reunited [illegible] those two when unreunited take. In t[illegible] partition before, on a division of the estat[illegible] widow has right and the case is not like th[illegible] brother. Therefore first the widow and afte[illegible] takes, say some. That is not correct as the us[illegible] "tu" shows that the rule is an exception to th[illegible] "the widow and the daughters also, &c." I[illegible] widow, the uterine brother reunited and the [illegible] as the non-uterine reunited brother and the [illegible]ster take. Failing them the reunited paternal uncle. [illegible] default the heirs beginning with the daughter, as the general rule becomes applicable there being no further bar to its application. Among the three persons entitled to reunite this is the order of succession, the old general rule being excepted by the use of the word "tu" otherwise there can be no share of the before-mentioned father, brother and the like.

The Chapters on exclusion from inheritance and on the character of Stridhana are omitted as there is nothing new and they agree with the Mitakshara.

SUCCESSION TO STRIDHANA

Succession to Stridhana.

On this Yajnavalkya lays down an exception in regard to the son's taking the maternal wealth thus: "The daughter's share the residue of their mother's property after payment of her debts. In their default the (male) issue." The word 'debts' here includes all sums which it is obligatory to pay, and therefore when the son and the grandson have no paternal wealth, on the authority of the text of Manu: "the support of those who should be supported is the commendable way of attaining heaven and their distress leads to hell, therefore they should be supported with solicitude" and of the text of Yajnavalkya: "and their childness wives conducting themselves aright must be supported" and also of the text of Narada: "they should make provision for the women till they die," wealth sufficient for the maintenance of helpless son's widows and the like the wives of outcaste, impotent and the like whose maintenance is obligatory, and also wealth sufficient for the performance of the obsequial ceremonies of the mother and for the payment of her debts should be first set apart and the remainder should be taken first by the unmarried daughter, and in her default by the married daughter. In their default the male issue take. The son and grandson and the like take the whole say Kalpatara and Vijnaneswara. Apararka, however, says that 'issue' means the daughter, her daughter and daughter's son. That is not correct. The word issue is connected with the word mother which being in the possessive [illegible], means her own issue and therefore after the daughters, [illegible] take, [illegible] as it is so laid down in the text. [illegible] the wealth after the death of both parents."

[illegible] of the son is small or when there is no [illegible] son is equal sharer with the daughter. [illegible]ys: "But when the mother has died, all the [illegible] and the uterine brothers shall equally divide [illegible]ate" From the above text of Manu, the text [illegible] given by the mother-in-law and the like and by [illegible]ut of affection, if she dies during the lifetime of [illegible]is taken by her children" refers to the rule [illegible]

Vijnanes[illegible] however, says that when there are no daughters, and the sons take, (the text of Manu cited above) means that they take equally.

Vijnaneswara says: "Since the conjunctive compound has not been employed" from the use of the word uterine, those born of the womb of another are excluded. From this and from the saying "the male enjoys more of the male and the female

more of the female" the daughter alone takes the Stridhana and failing her the son. Apararka says the conjunctive *Cha* has an alternative meaning. Therefore the son, failing the daughter and her daughter and her son, takes. It is said from the text of Katyayana "on failure of daughters, the wealth belongs to sons." Madhava, however, says that (the text of Manu) is for indicating equality or that it refers to wealth received from the husband.

Daughters take first in Yautuka.

In the following text of Manu about Yautuka: "but whatever may be the Yautuka of the mother, that is the share of the unmarried daughter alone" by the use of the word 'alone' sons are excluded. Yautuka means property given at marriage by father and the like. Vasista cited in the Kalpataru says: "Daughters divide the Parinahya of the mother." Here Parinahya means the mirror, the bracelet, the box for betelnuts and the like. Others say the correct reading is Parineyam which means Yautuka.

Son and daughter take equally both Stridhana.

In the text of Manu by the use of the conjunctive indicating association and on account of its being opposed to the reasonable rule mentioned before and because the special text giving the right of the maiden daughter becomes otherwise meaningless and because in equity son and daughter are equal and also because the text "in their default the male issue" and because the rule of the excess of bodily particles applies only to Yautuka, the rule (of Manu) refers to all (other) kinds of mother's wealth.

Therefore Manu and Devala say "The property of a woman on her death is taken in common by her sons and maiden daughters; in default of issue, the husband, the mother the brother or the father shall take." By the Dvanda for son and daughter, they take together say both these R. Vrihaspati also says: "Stridhana goes to th[illegible] daughter, if not betrothed, has a share in[illegible] she will not get the maternal wealth."

Sankha Likhita cited in the Apararka sa[illegible] brothers and sisters take equally the Stridhana[illegible] sisters. This refers to Yautuka. Gimutavaha[illegible] so. Among daughters, the unmarried takes[illegible] her default, the married, from the text of [illegible] woman's separate property goes to her u[illegible] and to poor daughters."

Apratisthita means poor. In default of such daughter, the daughter with husband and son and with wealth takes failing her the barren and widowed daughter takes. This also refers to Yautuka.

In the text of Narada: "daughters divide the property of their mother or failing them, their issue," issue means son

Right of the son.

and not daughter. Katyayana says : "In default of daughters Stridhana belongs to sons ; but what is given by Bandhus belongs to Bandhus ; in their default, to the husband. Sisters having husbands shall share with Bandhavas. This is the settled rule of lawful partition of Stridhana." In this text son means son of the mother and not of the daughter. This also refers to Yautuka, from the text of Manu "whatever may be the Yautuka of the mother that is the share of the unmarried daughter alone." Yautuka means what it received at marriage from Yu meaning mixing up. At marriage means on the fourth day ceremony, by the text "the bones with bones, &c., unity is attained." Vasista also says "mother's wealth received at marriage is taken by the daughter." In the text of Vishnu cited in the Kalpataru, premising, in marriages of women "if she leaves children, all goes to her daughter." Therefore because the special rule will become otherwise meaningless, in all other kinds of Stridhana sons have equal shares. Therefore what is stated by Apararka that other Stridhana is like Yautuka by analogy should be doubted.

What has been given by the father is taken by the daughter of co-wife of good caste and does not go to the husband on account of the text "the wealth of a childless woman goes to her husband." Because Manu says "whatever property has been given by her father to a wife, that the daughter of the Brahman a co-wife shall take or issue." 'Issue' here means son · others say the daughter's issue.

Daughter's daughter and daughter's son.

In default of the daughter, the daughter's son takes. In the text "if she leave progeny it goes to her daughters." ...aneswar says daughters include the daughter's daughter.
...n there are both daughters and daughter's daughters, the
...sed daughter's daughters may take the share of their
... to the rule that "share is according to
...qually with daughters as association with
... mentioned. But an exception is mentioned
...n to the daughters of those daughters some-
...given as is seemly, out of the estate of their
...mother on the score of affection." 'Something'
...rth of a share. The word 'even' indicates their
...er. But in default of the daughter, she takes
...n the text of Gautama ; "division is according
to mothe... ...ording to class," when the mothers are different and ... are unequal in number, they take according their mothers. This rule applies to all Stridhana except Sulka.

The Sulka belongs to uterine brothers from the text of Gautama. "The sister's fee belongs to her uterine brothers, if the mother be dead." Sulka means what is taken by the father on the marriage of his daughter.

In respect of the wealth of the unmarried girl, except in case of Sulka, Baudhayana says: "The heritage of a deceased maiden her uterine brothers themselves shall take; failing them it belongs to the mother." Succession maiden's estate.

On failure of daughter's daughter, the daughter's son takes from the text of Narada: "daughters divide the property of their mother, or failing, daughters their issue." Their issue refers to the daughters. Then also first the daughter takes and after her the daughter's son takes because there is more of her bodily particles in the daughter than in the son. Nor does the word issue mean only daughter's son on account of the text of Manu. There taking together is mentioned. Here taking in default is mentioned. And because the daughter's son's equality with the son's son is mentioned in the text of Manu "the daughter's son saves like the son's son," in default of the daughter's son, the sons take. Vijnaneswara says that in the text: "in default, the (male) issue,' *i.e.*, the son takes after the exhaustion of the heirs in the settled series beginning with the daughter and ending with the daughter's son. Daughter's daughter, daughter's son and son take in order.

In default of the son, the grandson takes, from the text: ' debts should be paid by sons and grandsons" by which the liability of the grandson to pay the grandmother's debt is established and from the text of Gautama that "they who take the wealth should pay the debts," and because in the text 'share the residue of their mothers property after paying the debt" the right of the payer of the debts to the estate is indicated. In default of the grandson, the greatgrandson takes because of his right to offer the Pinda from the text "the son, the grandson, the greatgrandson, brother or brother's descendants are offerers of the Pinda and also because of the text: "by son, grandson and greatgrandson a person attains to ... In his default the daughter of the co-wife ... text: "of all women having one husband ... the descendants of the co-wife from the te... default of the sons, the Kshetraja and the ... are wives of lower caste, the son of the Brahma... Right of the grandson and greatgrandson.

In default of the daughter's son of the co-wife ... takes, from the text of Yajnavalkya: "Her kin ... she die without issue." 'Bandhava means husb... as mentioned,' say Vijnaneswara and Apara... ...avahara however says Bandhava means brothers. ...s so from the text of Vriddha Katyayana: "Whatever immovable property has been given by the parents to the daughter, on her dying without issue it always goes to her brother" and from the text of Katyayana. "Whatever has been given by Bandhus on failure of Bandhus goes to the husband."

Yajnavalkya says: "That which was given to her by

Succession to Bandhudatta.

her Bandhus as well as her fee or any thing bestowed after marriage her Bandhus take it, if she die without issue." Bandhus mean mother, father and brothers. Baudhayana cited in the Apararka says: "The wealth of a deceased maiden daughter her uterine brothers themselves shall take, failing them, it belongs to the mother, failing to her the father." This refers to the property of a daughter before marriage.

Different rules in different forms of marriage.

In default of the brother, the husband (takes) from the text of Yajnavalkya: "The property of a childless woman married in the forms beginning with Brahma goes to her husband; but if she leave progeny, it will go to her daughters and in the remaining forms of marriage (as the Asura &c.) it goes to her father. The Mitakshara says 'daughters' here mean daughters of daughter because daughters had already been mentioned in the text "the daughters share the residue of their mother's property." Therefore in all forms of marriage if there be issue the inheritance belongs to the daughter, daughter's daughter, daughter's son, son, grandson and greatgrandson. In their default, when the deceased was without issue, if she had been married in the forms Brahma, Daiva, Arsha and Prajapatya, the estate goes to the husband; in the forms beginning with the Gandharva her mother and father take it. The word father in the text by Ekshesha Dandva includes the mother who is placed first.

Manu says: "It is ordained that the property (of a woman married) according to the Brahma, the Daiva, the Arsha, the Gandharva or the Prajapatya rule (shall belong) to her husband alone, if she dies without issue. *But it is prescribed that the* [illegible]perty which may have been given to a (wife) in an Asura [illegible]iage or (one of the) other (blamable marriages) shall go [illegible]r mother and to her father, if she dies without issue." [illegible] [illegible]oned that in the Gandharva form of marriage [illegible]kes This refers to Kshatriyas among [illegible]llowable. What has been received from [illegible]y the use of [illegible]e word Dattam.

[illegible] of the husband, the estate is obtained by his [illegible]eginning with the "the lawfully wedded wife and &c.," as prescribed in the text of Yajnavalkya in [illegible]t succession to sonless men). According to [illegible]s taken by the husband's wife, her co-wife's daughter [illegible] maiden daughter of the co-wife. Madhava says in [illegible] the word husband is used in sixth case though intended to convey the meaning of the third case Apararka says that [illegible] Gandharva form, it is an alternative rule. Gimutavahana [illegible] that the four forms beginning with the Brahma, with the Gandharva mentioned by Manu, make five. In these marriages whatever is received as Yautuka belongs to the husband and what is received in the three forms the Asura the

Paisacha and the Rakshasa belongs to the parents, for the terms in the form Brahma, &c., indicate the present time, and the meaning from analogy from relation to past ceremony is not intended. Therefore the wealth intended is the Yautaka received at the marriages Brahma, &c., from the context and all kinds of Stridhana are not intended such as whatever has been received before marriage or the gift subsequent and Bandhudatta. As in the case of the Sulka in the marriages Asura and the like, these three in the marriages Asura and the like go to the brother and in his default to the mother, from the text of Yajnavalkya that the Bandhudatta belongs to the parents and also from the before mentioned text of Baudhayana. Gautama also says ' the sister's Sulka belongs to the uterine brothers if her mother be dead."

Yajnavalkya says in reference to Sulka of a girl dead before her marriage: ' if she die, he (the bridegroom) shall receive back what he has given, deduction being made for the expenditure on both sides." The meaning is that the bridegroom receives back after deducting the expenses incurred on the father.

In default of the parents Katyayana lays down: "Bandhudatta goes to the husband on failure of Bandhus" In default, the husband, the co-wife, her son and her daughter's son take. In their default, the mother-in-law, the father-in-law, the husband's younger brother and his son and like who are near relations of the husband take according to the text of Yajnavalkya. "The lawfully wedded wife and the daughters, &c.," according to Vijnaneswara and Apararka.

On failure of son, grandson, co-wife's son and the daughter's son, Vriddha Vrihaspati cited in the Madhavya and ... Apararka (lays down the following *rule of succession*): "... mother's sister, *the wife of a maternal uncle, a pate...* wife a father's sister, a mother-in-law and ... wife are declared to be equal to a mothe[r] ... legitimate issue of the body, nor other ... son, nor their son, their [si]ster's son, &c, ... property." The legitimate issue mean both son ... The words son means the daughter and son ... according to Gimutavahana from the text of ... among all the wives of one husband, one have ... declares them all to be mothers of male ... that son." The word son means issue. ...ana there being precedence of daughters, on failure of the co-wife's daughter, daughter's daughter, daughter's son and son, the issue of the sister beginning with the daughter take the wealth.

Special he[irs] mention[ed]

Therefore Madana Ratna says that the text of Manu "whatever may have been given by her father, that the daughter of the Brahmani co-wife shall take or her issue,' refers

to the daughter of the co-wife of equal or higher caste and her son, from the text of Sumantu "all the wives of the father are mothers." Katyayana cited in the Madana Ratna says: "the legitimate son performs the obsequeal ceremonies of the mother, failing him, the co-wife's son and also the son Kshetraja." Here the Kshetraya sons come after the co-wife's son by implication and the word their son includes the co-wife's son's son. In his default, the husband, his brother and his brother's son and in their default the sister's daughter and son, failing the sister, take the wealth of their mother's sister.

The issue of the husband's sister, takes the wealth of the maternal uncle's wife and the son of the husband's younger brother takes the wealth of the uncle's wife, the brother son that of the father's sister, the son-in-law that of the mother-in-law, and the husband's younger brother that of the elder brother's wife They take in the order mentioned is the meaning. This is the rule when there is no sister and these heirs exist when they take equally. But if on failure of the co wife and her son, the husband's younger brother and the like exist, they only take. Some say there is equal division. There on account of nearness of relationship, and from the rule of Manu "shall go to her mother and to her father" and those related through them being declared heirs, the mother and in her default, the father and after him the heirs indicated in the text "the lawfully wedded wife and the daughters, &c," in order and thus the step-mother, her daughter, the paternal grand-mother, the paternal uncle, his son and Sapindas are takers of the wealth. Madhava says that the mother's sister, the father's sister and their sons, who are related through the mother and the [illegible]her, mentioned in Vrihaspati's text are to be accepted (as [illegible]s), failing [illegible] the son-in-law, stepmother and the like. The [illegible] the co-wife and daughter-in-law are heirs by virtue of [illegible] fully wedded wife and the daughters, &c." [illegible] that because of the objection that the [illegible] brother is mentioned as taking last, the [illegible] in the text and also because it contradicts the [illegible] to that relative nearest to the deceased Sapinda [illegible] all belong." Also because from the text of Manu: [illegible]e water must be offerd; to three the Pinda is [illegible]om the text "the offerer of the Pinda is the taker [illegible] of these persons," the heirship of the offerer of the Pinda [illegible]ed.

Vriddha Satatapa cited in the Apararka says: "the maternal uncle performs the Sraddha of the sister's son, the sister's son of the maternal uncle Sraddha should be performed of the father-in-law, of the Guru, of the friend, of the maternal grandfather and also of their wives and likewise of the father's and mothers sisters say those that know the Vedas." The order should be determined according to the relative right to offer the Pinda.

Thus first comes cowife's daughter, daughter's son and son Failing them, comes the husband's younger brother and failing him, his son From being entitled to offer the Pinda and because he is a Sapinda, the paternal uncle is heir to Stridhana Failig him the daughter in law, from the text "the daughter in law performs the Sraddha of the mother in-law and a failing her, the Sapinda ' Failing her, the sister's son takes the wealth of the mother's sister because of his right to offer the Pinda Failing him, the sister's son of the husband takes the wealth of the maternal aunt, because he effers the Pinda of the three ancestors and of the husband Failing him, the brother's son takes the wealth of the father's sister, because he is entitled to offer the Pinda to her and her father Failing him, the son in-law takes the wealth of the mother in law and of the father in law because of his right to offer the Pinda Failing all these the Sapindas take. This finished the chapter on succession to Stridhana. Shon settled ding to doctrin speret benefit

Thus ends Vivada Tandava composed by Kamalakara Bhatta, son of Narayana Bhatta, the son of the world teacher, Rameswara Bhatta Suri who had crossed the sea of dialectics and logic.

विवादताण्डवम् ।

श्रीरामकृष्णपितरं नत्वोमाख्यां च मातरम् ।
कमलाकरसंज्ञेन व्यवहारो निरूप्यते ॥

अथापुत्रधनविभागः ।

याज्ञवल्क्यः । पत्नी दुहितरश्चैव पितरौ भ्रातरस्तथा । तत्सुता गोत्रजा बन्धुः शिष्यसब्रह्मचारिणः । एषामभावे पूर्व्वस्य धनभागुत्तरोत्तरः । स्वर्यातस्य ह्यपुत्रस्य सर्व्ववर्णेष्वयं विधिः । अत्रेदं तत्त्वम् । अविभक्ताः संसृष्टी वा यदि मृतस्तस्यांशमविभक्ताः संसृष्टीच भ्रात्रादिरेव लभते । एवं मात्रा सहाविभक्तस्य मरणे मातैव सर्व्वं लभते । एकतरमृतावन्यस्य सत्त्वात् । पत्नी तु जीवनमात्रम् । यस्त्वसंसृष्टी विभक्तो मुख्यपुत्रपौत्रप्रपौत्रगौणपुत्रहीनो मृतस्तस्य सर्व्वं स्थावरादिधनं ब्राह्मादिविवाहोढासंयता पत्नी भर्त्तुः पितामही विधवानाथस्नुषाणां क्लीबादिपत्नीवद्-भरणीयत्वादन्यथा दोषोक्तेस्तज्जीवनपर्य्याप्तं सापत्नकन्याविवाहपर्य्याप्तं च दत्त्वा शेषं स्वयं गृह्णीयात् । इदं प्रागुक्तं वक्ष्यते च स्त्रीधनविभागः । पत्नीकार्य्येदिभज्य लभन्ते पत्युर्नो यज्ञसंयोग इति श्रुतेः । मुख्यगौणपुत्रहीने । अपुत्रा शयनं भर्त्तुः पालयन्ती व्रते स्थिता । पत्न्येव दद्यात्तत्पिण्डं कृत्स्नमंशं लभेत चेति मनूक्तेः । यदभावे दुहित्रादयस्त्वयं सर्व्वेष्वनुलोमेषु प्रतिलोमेषु च विधिरित्यर्थः ।

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यत्तु कात्यायनः । मृते भर्त्तरि भर्त्रंशं लभेत कुलपालिका । यावज्जीवं हि न स्वाम्यं दानाधमनविक्रये । इति तदवरुद्धस्त्रीपरमिति विज्ञानेश्वरः । गौडास्तु स्थावरादौ पत्न्या यावज्जीवं भोग एव न तु दायादानुमतिं विना दानविक्रयादौ स्वातन्त्र्यम् । अपुत्रा शयनं भर्त्तुःपालयन्ती व्रते स्थिता । भुञ्जीतामरणं क्षान्ता दायादा ऊर्ध्वमाप्नुयुरिति कात्यायनोक्तेः । भर्त्तुः श्राद्धौर्ध्वदेहिकार्थं तु दानविक्रया-दीन् कुर्य्यादेव । पत्न्येव दद्यात्पिण्डमित्युक्तेः । अतएव विभक्ता वा विभक्ता ।

दायादाः स्थावरे समा इति नारदीयं विभक्तपत्नीस्थावरपरमित्याहुः। जीमूतवाहनो ऽप्येवम्। तदपरार्कमदनरत्नमाधवीयादावभावान्निर्मूलम्। समूलत्वेऽप्यासुरादिविवाहोढस्त्रीपरमविभक्तस्त्रीपरं व्यभिचारिणीपरं वा न पत्नीपरम्। विधवा यौवनस्था चेन्नारी भवति कर्कशा। आयुषः क्षपणार्थं तु दातव्यं जीवनं तदेति हारीतोक्तेः। विभक्तभर्तृपत्नीपरं विधिनिषेधादिति सर्वसिद्धान्तः। मातुरूर्ध्वं दुहित्रादेस्तद्धनहारित्वयोगात्स्वातन्त्र्याभावे विभागवैयर्थ्यात्। किञ्च जीवति मृते वा पत्यौ पुत्रे सत्यपि तद्धर्मोऽय उक्तः मृते तु कथं न स्यात्।

यत्तु स्मृतिचन्द्रिकायां वृहस्पतिः। यद्विभक्तं धनं किञ्चिदाध्यादिविविधं स्मृतम्। तज्जाया स्थावरं मुक्त्वा लभेत गतभर्तृका। वृत्तस्थापि कृतेऽप्यंशे न स्त्री स्थावरमर्हतीति। तन्निर्मूलमासुरादिविवाहोढस्त्रीपरं वापुत्रविभागोत्तरं विभक्तपुत्राभावे पितृर्जितस्थावरपरं वा। अन्यथा जङ्गमं स्थावरं मुक्त्वेति पूर्वोक्तविरोधापत्तेः। पत्नीमद्धाभावाच्चेति। मदनरत्ने दुहितृहीनपत्नीपरो निषेधः। तद्युक्तपरो विधिरिति चन्द्रिका। सा मूलाभावादयुक्ता। दायादानुमतौ स्थावरे स्वाम्यं प्रागुक्तम्। तां विना तु स्वातन्त्र्यनिषेधः। विभक्ता वाविभक्ता वा दायादा. स्थावरे समा इत्युक्तेरिति माधवाचार्याः।

यत्त मिताक्षरायाम्। यज्ञार्थं द्रव्यमुत्पन्नं तत्रानधिकृतास्तु ये। अरिक्थभाजस्ते सर्वे ग्रासाच्छादनभाजनाः। यज्ञार्थं विहितं द्रव्यं तस्मात्तद्विनियोजयेत्। स्थानेषु धर्मजुष्टेषु न स्त्रीमूर्खविधर्मिष्विति। तन्न वंश्य यज्ञार्थत्वे दानभ्रातृजीवनाद्यसंभवापत्तेर्हिरण्यं धार्यमिति पुरुषार्थत्वन्यायबाधापत्तेश्च यज्ञार्थदत्तद्रव्यपरं न सर्वपरम्। यज्ञार्थलब्धमददद्भासः काकोऽपि वा भवेदिति स्मृतेरिति विज्ञानेश्वरः। नच बहुधनं जीवनमात्रमिति मदनरत्नविज्ञानेश्वरौ अपरार्कस्तु। विभक्ता भ्रातरो ये च सम्प्रीत्यैकत्र संस्थिताः। पुनर्विभागकरणे ज्येष्ठ्यं तेषां न विद्यते। यदा कश्चित्प्रमीयेत प्रव्रजेद्वापि कश्चन। न लुप्यते तस्य भागः सोदर्य्यस्य विधीयते। या तस्य भगिनी सा तु ततोऽशं लब्धुमर्हति। अनपत्यस्य धर्मोऽयमभार्यापितृकस्य च। संसृष्टानां तु यःकश्चिद्विद्याशौर्यादिना धनम्। प्राप्नोति तस्य दातव्यो द्व्यंशः शेषाः समांशिन इति। वृहस्पतिना संसृष्टपत्नीपरोऽयं विधिः। आसुरादिविवाहोढस्त्रीपरः। संसृष्टानां तु यो भागःस तस्या नेष्यते बुधैरिति निषेध इति ज्ञेयम्। सोदरभ्रात्रभावे भगिन्या अधिकार इत्यपरार्कः। जीमूतवाहनादयस्त्वसंस्कृतविभक्तपत्न्यंशं हरेदित्याहुस्तन्न। संसृष्टानां तु यो भागःस तस्या नेष्यते बुधैरिति मिताक्षराधृतनारदवचोविरोधात्। अविभक्तानाम्। स्वर्याते स्वामिनि स्त्री तु

ग्रासाच्छादनभागिनी। अविभक्तधनांशं तु प्राप्नोत्यामरणान्तिकमिति मदनरत्ने कात्यायनविरोधाच्च। तेन संसृष्टायां विकल्प इत्यन्ये। उत्तमवर्णाया: संसृष्टाया भाग: सवर्णाया निकृष्टवर्णाया निषेध एव।

यानिनु शङ्ख:। स्वर्यातस्य ह्यपुत्रस्य भ्रातृगामि द्रव्यं तदभावे पितरौ हरेतां ज्येष्ठा वा पत्नीति। मनु:। पिता हरेदपुत्रस्य रिक्थं भ्रातर एव वा। तथा। अनपत्यस्य पुत्रस्य माता दायमवाप्नुयात् मातर्यपि च वृत्तायां पितुर्माता हरेद्धनम्। इति। कात्यायन:। विभक्ते संस्थिते द्रव्ये पुत्राभावे पिता हरेत्। भ्राता वा जननी वाथ माता वा तत्पितु:क्रमादिति। यच्चापरार्के देवल:। ततो दायमपुत्रस्य विभजेरन्सहोदरा:। तुल्या दुहितरो वापि ध्रियमाण: पितापि वा। सवर्णा भ्रातरो माता भार्या चैते यथाक्रमम्। तेषामभावे गृह्णीयु:कुल्यानां सहवासिन इति। तान्यधिकारिमात्रपराणि न क्रमपराणि। एषामभावे पूर्वस्येति श्रौतक्रमेण पाठक्रमस्य बाधात्। नलेषासुरायूढस्त्रीपराणीति सर्वसिद्धान्त:। अतएव। मृते भर्त्तरि साध्वी स्त्री ब्रह्मचर्यव्रते स्थिता। स्नाता प्रतिदिनं दद्यात्स्वभर्त्रे सलिलाञ्जलीन्। विष्णोराराधनं चैव कुर्यान्नित्यमुपोषिता। दानानि विप्रमुख्येभ्यो दद्यात्पुण्यविवृद्धये। उपवासांश्च विविधान्कुर्याच्छास्त्रोदिताञ्छुभान्। लोकान्तरस्थं भर्त्तारमात्मानं च वरानने। तारयत्युभयं नारी नित्यं धर्मपरायणेति। व्यासोक्तेर्दानाद्युक्तम्। नचेदं स्त्रीधनपरं मृते भर्त्तरीति वैयर्थ्यात्।

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अविभागे तु नारद:। यावन्त्री विधवा नार्यो ज्येष्ठेन श्वशुरेण वा। गोत्रजेनाथ वान्येन भर्त्तव्याच्छादनाशनै:। एवं संसृष्टापीति विज्ञानेश्वरादय:। नत्वपरार्कगौडादय:। विभक्तापि गुर्वादिप्रतिकूला नांशभागित्याह मदनरत्ने कात्यायन:। भोक्तुमर्हति कृतांशं गुरुशुश्रूषणे रता। न कुर्याद्यदि शुश्रूषां चैनं पिण्डं नियोजयेत्। अपकारक्रियायुक्तानिर्लज्जा चार्थनाशिका। व्यभिचाररता या च स्त्रीधनं नैवमर्हति। व्यभिचारे पोषणमपि नेत्युक्तं आच्छिन्द्युरितराश्रियत्र यत्तु। एवमेव विधिं कुर्याद्योषित्सु पतितास्वपि। वस्त्रान्नपानं देयं तु वसेयुश्च गृहान्तिक इति। तन्नर्त्तुपरं न दैवादिपरम्। विभक्ता तत्स्था तु सर्वं धनं लभते इति पत्न्यधिकार:।

तदभावे दुहिता धनभाक्। यथैवात्मा तथा पुत्र:पुत्रेण दुहिता समा। तस्यामात्मनि तिष्ठन्त्यां कथमन्यो धनं हरेदिति मनूक्ते:। नारदोऽपि। पुत्राभावे तु दुहिता तुल्यसन्तानदर्शनात्। पुत्रश्च दुहिता चोभौ पितु:सन्तानकारकौ। इत्युक्ते:। अङ्गादङ्गात्संभवति पुत्रवद्दुहिता नृणाम्। तस्मात्पितृधनं त्वन्य:

सर्वं गृह्णीत मानवः। तत्राप्यादावनूढा। पत्नी भर्तुर्धनहरी या स्यादव्यभिचारिणी। तदभावे तु दुहिता यद्यनूढा भवेत्तदेति कात्यायनोक्तेः। तदभावे तूढा। अपुत्रस्य मृतस्य कुमारी रिक्थं गृह्णीयात्तदभावे तूढेति जीमूतवाहनधृतपराशरोक्तेः। तास्वपि दरिद्रा स्त्रीधनं दुहितॄणामप्रत्तानामप्रतिष्ठितानां चेति गौतमोक्तेः पित्रेऽपि न्यायसाम्यात् च शब्दाद्दुहित्रभावे दौहित्रो धनहारी। अपुत्रपौत्रसन्ताने दौहित्रा धनमाप्नुयुः। पूर्वेषां तु स्वधाकारे पौत्रा दौहित्रका मताइति विष्णूक्तेः। यथा पितृधने स्वाम्यं तस्याः सत्स्वपि बन्धुषु। तथैव तत्सुतोऽपीष्टे मातृमातामहं धनमिति बृहस्पतिसूत्रेः। दौहित्रो ह्यखिलं रिक्थं अपुत्रस्य धनं हरेत्। स एव दद्याद्द्वौ पिण्डौपित्रे मातामहाय च पौत्रदौहित्रयोर्लोके विशेषो नास्ति धर्मतः। तयोर्हि मातापितरौ संभूतौ तस्यदेहतः। अकृतो वा कृतो वापि यो विन्देत्सदृशं सुतम्। पुत्री मातामहस्तेन दद्यात्पिण्डं हरेद्धनमिति मनूक्तेः।

दौहित्राभावे मातादौ ततः पिता धनभाक्। द्वन्द्वापवादके पितराविल्येकशेषे विग्रहे मातुः पूर्वत्वादसाधारण्यात्पितुः पुत्रान्तरेऽपि सत्त्वाच्चेति विज्ञानेश्वरः। मदनरत्नादौ तु पूर्वोक्तविष्णुकात्यायादौ पितुःश्रौतक्रमात्पूर्वत्वमुक्तम्। जीमूतवाहनोऽप्येवम्। पितुः शतगुणं माता गौरवेणातिरिच्यत इत्युक्तेः। एभ्यो माता गरीयसीति वचनाच्च। मनुरपि। बीजस्य चैव योन्याश्च बीजमुत्कृष्टमुच्यते। यत्तु बीजाद्योनिर्बलीयसीति तत्स्वत्वपरं गवाश्वादौ न विभागपरम्। प्रकृत्या पूर्वं पितुः सत्त्वान्मातुः पश्चात् प्रतीतेश्चेत्यपरार्कः। तस्य तु पितराविल्येकशेषस्य द्वन्द्वापवादत्वात्साहित्यप्राप्तौ पूर्वाभावे परःपरइतिविरोधाद्द्विवचनाद्द्वन्द्वादुक्तयुक्तिभिर्मातुरेव प्राथम्यं प्रतीयते पितुस्तत्त्वे द्वन्द्वस्य साधुत्वात्। अतएव। पितरौ वन्दे पार्वतीपरमेश्वरावित्यादौ मातुरेव प्रथमनिर्देशः।

यत्तु मनुः। मातर्यपि च वृत्तायां पितुर्माता हरेद्धनमिति मातुरभावे पितामह्या धनग्रहणमुक्तं तच्छ्रौतक्रमाविरोधाद्भ्रातृपुत्रान्ते ज्ञेयम्। भ्रातरोऽप्यादौ सोदरास्ततो भिन्नोदराः। मातृभेदाद्नन्तरः सपिण्डाद्यस्य तस्य धनं भवेदिति मनूक्तेः। भ्रात्रभावे भ्रातृपुत्राः। तत्राप्यादौ सोदरभ्रातुः पुत्राःतेन प्रकृत्यापाठात्पितुः पूर्वत्वंहित्वमुत्थाप्यम्। तेन विष्ण्वादौ श्रौतोऽपि क्रमोविजातीयपितृपरः। तदभावे भ्रातरस्तु भ्रातृपुत्राः सनाभयः। सकुल्या बान्धवाः शिष्याः श्रोत्रियाश्च धनार्हका इति श्रुतेः। तच्छब्दः दौहित्रपितृपरः। विश्वरूपभोजराजगोविन्दराजा अप्येवं।

केचित्भ्रातृपुत्रौ स्वसृदुहितृभ्यामिति स्वसा सह भ्रातुरेकशेषाद्भगिन्योऽपि धनमर्थमाहुः। ते मूर्खाएव एकशेषे भ्रातृभगिन्योरेकशब्दोक्तेः पौर्वापर्याभावेन सम-

विभागापत्त । ततसुता इत्यत्र स्वसोदर्भ्रातृपुत्रयोर्भागापत्तश्च । सहविभागे भगिन्यश्च सनाभय भगिन्यश्च निजादश्चादित्यत्र पृथङ्निर्देशवैयर्थ्याश्च ।

भ्रातृधनविभागात्पूर्वमन्यस्मिन् मृते तत्पुत्राणां पितृतो भागकल्पना ।

भ्रातृपुत्राभावे गोत्रजा तत्राप्यादौ पितामही । बहवो ज्ञातयो यत्र सकुल्या बान्धवास्तथा । यस्त्वासन्नतरस्तेषां सोऽनपत्यधनं हरेदित्यपरार्के वृहस्पत्युक्त । ज्ञातय सपिण्डा । सकुल्या सोदका । बान्धवा पितृष्वसृसुतादय । अनन्तर सपिण्डाद्यस्तस्य तस्य धन भवदिति मनूक्तश्च । सपिण्डानां प्राप्तौ श्रौतक्रमवद्वपत्न्यादिशृङ्खलायामन्याप्रवेशादागन्तूनामन्त निवेशात् । अनपत्यस्यपुत्रस्य माता दायमवाप्नुयात । मातर्यपि च वृत्तायां पितुर्माता हरेद्धनमिति मनूक्तभ्रातृपुत्रान्त पितामह्या अविरोधान्निवेश । तदभावेनयैव दिशा पितामह पितृव्यततपुत्रास्तदभावे प्रपितामही प्रपितामह ततपुत्रा इत्य वमासप्तम सपिण्डा तदभावे सोदका धनभाज । पूर्वोक्तबृहस्पतिस्मृतेर्गोत्रजत्वाविशेषाच्च । बन्धूनां सपिण्डत्वेऽपि भिन्नगोत्रत्वाद्भिन्नोक्ति ।

सोदकास्तु वृद्धमनूक्ता । सपिण्डता तु पुरुष सप्तमे विनिवर्तते । समानोदकभावश्च निवर्तेत चतुर्दशात । जन्मनाम्नो स्मृतरेके तत्पर गोत्रमुच्यते । जन्मनामज्ञानान्ता वा ।

सोदकाभावे बन्धवो धनभाज । ते त्रिविधा स्मृत्यन्तरे उक्ता । आत्मपितृष्वसु पुत्रा आत्ममातृष्वसु सुता । आत्ममातुलपुत्राश्च विज्ञेया आत्मबान्धवा । आत्मपदे पितृपदे दत्त पितृबन्धव । मातृपद दत्त मातृबन्धव । तत्राप्या-दावात्मबन्धवस्तदभावे पितुर्मातुर्बन्धव । प्रत्यासत्तेरिति विज्ञानेश्वरादय । अपरार्कस्तु । पितृमातृबन्धुषु तच्छब्दपूर्वकसोपपदबन्धुशब्दोक्तानां नकेवलमात्र बन्धुशब्देन ग्रहणं युक्तम् । नन्वाशौच पितृबन्धौ मातृबन्धौ मण्डलऽधिपतौ तथेति तद्विशेषग्रहणमस्ति । न अमुख्यगौणयोर्युगपद्ग्रहण युक्तम् । मुख्यासम्भवक्लृप्तत्वा दितरस्य युगपसम्भवासम्भवविरोधात । परपरयात्मसम्बन्ध स्त्र्यपि तुल्य । तेनात्मबन्धूनामेव ग्रहणमित्याह । बन्धूनामभावे आचार्यस्तदभावे शिष्य । पुत्राभावे सपिण्डस्तदभाव आचार्यस्तदभावेऽन्तेवासीत्यापस्तम्बीयश्रौतक्रमेणात्र पाठ क्रमबोधात् । शिष्याभावे सहाध्यायी । तदभावे श्रोत्रिया अन्य ब्राह्मणा वा धन भाज । श्रोत्रियो ब्राह्मणस्यानपत्यस्य रिक्थ हरेदिति गौतमोक्ते । सर्व्वेषामप्य भावे तु ब्राह्मणा रिक्थभागिनइति मनूक्तेश्च । नारदोऽपि । ब्राह्मणार्थस्य तन्नाशे दायादश्चेन्न कश्चन । ब्राह्मणायैव दातव्यमेनस्वी स्यान्नृपोऽन्यथा । अतार्थं ब्राह्मण द्रव्यं राज्ञा नित्यमिति स्थिति । इतरेषां तु वर्णानां सर्वाभावे हरेन्नृपइति मनूक्ते ।

देवलः। सर्वत्रादायिकं राजा हरेद्ब्राह्मणवर्जितम्। अदायिकं तु ब्राह्मणं श्रोत्रियेभ्यःप्रदापयेत्। विष्णुः। यथार्थहर सपिण्डदायो सर्वत्र रिक्थग्राहिणा तदीयवस्त्रं देयं तदीयपोष्याःपोषणीयाश्च। रिक्थभाज ऋणं प्रतिकुर्युरिति गौतमोक्तेः। मनुरपि। भरणं पोष्यवर्गस्य प्रशस्तं स्वर्गस धनम्। नरकं पोडिते चास्य तस्माद्यत्नेन तं भरेत् यौविद्धस्त्वौर्ध्वदेहिकार्मिति नारदोक्तेश्चेति दिक्।

यत्यादिधन विभागः।

पत्न्यादेरपवादमाह याज्ञवल्क्यः। वानप्रस्थयतिब्रह्मचारिणां रिक्थभागिनः। क्रमेणाचार्यसच्छिष्यधर्मभ्रात्रेकतीर्थिन। प्रतिलोमक्रमेण नैष्ठिकस्याचार्य उपनेतान्यस्य भात्रादि। यते. शिष्यः। वानप्रस्थस्य धनं धर्मभ्राता प्रतिपन्नो भ्राता सचासावेकतीर्थी एकाश्रमी गृह्णातीति विज्ञानेश्वर। मदनरत्ने त्वनुलोमक्रम उक्तः। यद्यप्यनंशास्त्वाश्रमान्तरगता इति वसिष्ठोक्तेरनिचयो भिक्षुरिति गौतमोक्तेश्च तर्षां द्रव्याभावस्तथापि कुटोमठकन्यापुस्तकादिद्रव्य तस्यैवेत भागिन'।

अथ संसृष्टिविभाग।

अपुत्रधने पत्न्याद्यपवादमाह याज्ञवल्क्यः। संसृष्टिनस्तु संसृष्टी सोदरस्य तु सोदरः। दद्याच्चापहरेच्चांशं जातस्य च मृतस्य चेत्यपरार्के मदनरत्ने च पाठः-स्वर्यातस्य ह्यपुत्रस्येत्यनुवर्तते। एव धनं तन्मम यन्मम धनं तत्तवेत्येव परिभाषया धनस' सर्गःप्राच्योक्तस्तयुक्त एव। जडवालधने ससृष्टे संसृष्टत्वाभावापत्तेः। अपुत्रस्य संसृष्टिनो धनं संसृष्टय व गृह्णाति न पत्न्यादिरित्यर्थः। यत्र तु सोदरः असोदरश्च संसृष्टी तत्र सोदर एव संसृष्टी तद्धनग्राही न भिन्नोदरःसंसृष्टी। संसृष्टिनोविभागोत्तरमज्ञातगर्भायां पत्न्यामुत्पन्नपुत्रस्य सोदरो भिन्नोदरो वा संसृष्टी पितृमंशं तस्मै दद्यात्तदभावे स्वयं गृह्णीयादित्यर्थः।

उर्ध्व विभागाज्जातस्तु पित्र्यमेव हरेद्धनम। संसृष्टास्तेन वा ये स्युर्विभजेत सतैःसहेति मनूक्तेः विभक्तजस्य संसृष्टिनासह दिभागोक्तेरनपत्यस्य धर्मोऽयमित्युक्तेश्च पुत्रपौत्रादेःप्रावल्यात्। पत्नी च लभते मातापत्र्यंशं समं हरेदित्यविशेषात्। पुत्राद्यभावे। पित्रादिर्लभते। ततो भार्या। तदुक्तमनपत्यस्य धर्मोऽयमभार्यापितृकस्य चेति। अयं धर्मः भातृणां धनग्रहणरूपः। तदभावे सोदरःसंसृष्टिभगिनी। असंसृष्टौ तौ च। अत्र संसृष्टस्य विभागपूर्वकत्वाद्विभागे च पत्न्यादपि स्वाम्यात्राविभक्तभ्रातृस्वाम्यं तेनादौ पत्नी ततःपितरौ वै। तत्र तु शब्देन पत्नीदुहितरश्चैवेत्यस्यापवदायोगात् भार्याभावे सोदरःसंसृष्टी असंसृष्टी च भिन्नोदरः-

संसृष्टि सोदरा भगिनी वा तदभावे संसृष्टःपितृव्यः तदभावे दुहित्रादिः पूर्वोक्त एव अपवादाभावे पुनरुत्सर्गप्राप्तेः।

*   *   *   *   *

अथ स्त्रीधनविभागः।

तत्र पुत्राणां मातृधनग्रहणापवादमाह याज्ञवल्क्यः। मातुर्दुहितरः शेषमृणात्ताभ्य ऋतेऽन्वयः। ऋणपदमवश्यदेयधनपरं तेन पुत्रपौत्राणां पित्र्यधनाभावे ऽनाथविधवास्नुषाणां च। भरणं पोष्यवर्गस्य प्रशस्तं स्वर्गसाधनम्। नरकं पीडिते चास्य तस्माद्यत्नेन तं भरेदिति मनूक्तेः। अपुत्रा योषितश्चैषां भर्तव्याःसाधुवृत्तयइति याज्ञवल्क्योक्तेः। भरणं चास्य कुर्वीरन् स्त्रीणामाजीवनक्षयादिति नारदोक्तेश्च। पतितक्लीवादिस्त्रीवत्सुतरां पोषणीयत्वात्तत्पर्याप्तं मातुरौर्ध्वदेहिककृत्यादिपर्याप्तं च संस्थाप्य शेषमनूढाःकन्यास्तदभावे ऊढाःस्त्रियः। तदभावेऽन्वयः। पुत्रपौत्रादिसर्वे हरेदिति कल्पतरुविज्ञानेश्वरौ। अन्वयःकन्यादुहितृदौहित्रा इत्यपरार्कः। तन्न। अन्वये सम्बन्ध्यपेक्षे मातुःसम्बन्धस्यैवान्वयाङ्गत्वात् तेन कन्याभावे पुत्राः। सुताःपित्र्येऽध्वे रिक्थमित्युक्तेश्च। न्यूने पुत्रस्य पितृधनाभावे च भगिनीसमोंऽशः।

अतएव मनुः। जनन्यां संस्थितायां तु समाःसर्वे सहोदराः। भजेरन्मातृकं रिक्थं भगिन्यश्च सनाभय इति। इदम्। श्वश्र्वादिभिश्च यद्दत्तं पत्या प्रीतेन चैव यत्। पत्यौ जीवति वृत्तायाःप्रजायास्तद्धनं भवेदिति मनूक्तेस्तत्परम्। विज्ञानेश्वरस्तु दुहित्रभावे पुत्राणां यदांशस्तदा समतार्थमिदम्। द्वन्द्वैकशेषाभावादितरेतरयोगाप्रतीतेःसोदरोक्तेर्भिन्नोदरनिवृत्तिः। नेन पुमान् पुंसोऽधिकं भुक्ते स्त्री भवत्यधिकं स्त्रिय इत्युक्तेः। स्त्रीधनं कन्यैव तदभावे पुत्री हरेदित्याह। अपरार्कोऽपि चकारो विकल्पार्थः। तेन कन्या तद्दुहितृदौहित्राभावे पुत्रोहरेत्। दुहितृणामभावे तु रिक्थं पुत्रस्य तद्भवेदिति कात्यायनोक्तेरित्याह। माधवस्तु साम्यार्थं पतितअधनपरं वेत्याह। एतद्यौतुकपरम्। मातुस्तु यौतुकं यत्स्यात्कुमारी भागएव सइति मनूक्तेः। एवकारात्पुत्रनिवृत्तिः।

यौतुकं विवाहेपित्राद्यैर्दत्तम्। कल्पतरौ वसिष्ठः। मातुःपारिणाह्यं स्त्रियो विभजेरन्। पारिणाह्यं उपस्करः। आदर्शकङ्कणताम्बूलकरण्डकादि इति कल्पतरुः। पारिणेयमिति पाठाद्यौतुकमित्यन्ये। तन्मानवे समार्थचकारैव साहित्योक्तेः पूर्वोक्तयुक्तिवचोविरोधाद्यौतुके कन्याधिकारविशेषवाक्यवैयर्थ्याश्चायत एव समत्वविधौ तद्यथांशाभ्यां ऋते इत्यस्य अव्ययवाधिक्यस्य च यौतुकपरत्वाच्च

धनपरत्वं चिन्त्यम्। अतएव मनुदेवलौ। सामान्यं पुत्रकन्यानां मृतायां स्त्रीधनं स्त्रियाम्। अप्रजायां हरेद्भर्ता माता भ्राता पितापि वेति। पुत्रकन्य यौह न्यासाधिव आहतु। बृहस्पतिरपि। स्त्रीधनं तदपत्यानां दुहिता च तदंशिनी। अप्रजा चेत्समूढा तु लभेन्मातृकं धनम्।

अपरार्के शङ्खलिखितौ। सम सर्वं सोदर्या द्रव्यमर्हन्ति कुमार्यश्च। इद यौतुकपर इदमेव युक्तम्। जीमूतवाहनोऽप्येवम्। कन्याप्यनूढादौ तदभावे ऊढा स्त्रीधनं दुहितॄणामप्रत्तानामप्रतिष्ठितानां चेति गौतमोक्त। अप्रतिष्ठिता निर्धना। तदभाव स वा सपत्र सधना च तदभाव वन्ध्या विधवा च। इदमपि यौतुक-परमेव। यत्तु नारद। मातुर्दुहितरोऽभावे दुहितॄणां तदन्वय इति। तदन्वय पुत्र न कन्य पत्यम। यच्चापरार्के कात्यायन। दुहितॄणामभाव तु रिक्थ पुत्रस्य तद्भवेत। बन्धुदत्त तु बन्धूनामभाव भर्तगामि तत। भगिन्यो बान्धवै सार्धं विभजेरन्भर्तृका। स्त्रीधनस्यापि धर्म्योऽय विभागस्तु प्रकल्पित इति। तत्र मातुरेव पुत्रो न दुहितु। ताभ्या ऋते अन्वय इति अन्वयपदे मातुरेवान्वयात्ताभ्या इति पञ्चम्यन्तस्य सम्बन्धाभावान्नदविरोधान्नारदादेस्तद्यौतुकपरम। मातुश्च यौतुक यतस्या कुमारीभाग एव स इति मनूक्त। यौतक विवाहलब्धम्। युमिश्रण। तत्र ह्यग्निभिरस्योनीत्य चतुर्थीकर्मणि कृतम्। मातु पारिणेयं स्त्रियो विभजेरन्निति वसिष्ठोक्त। विवाहऽपि तुहतौ स च प्रसूतायास्तदन दुहितृगामीति कल्पतरौ विज्ञानेश्वरः। अतएव विश्वरूपेयथ्यादन्यत्र पुत्रसमांशत्वम्। तेनापरार्कोक्त यौतुकस्योपलक्षणत्व चिन्त्यम्। पितृन्त्त तु सप्तमातृधनमुतकृष्टजातिमातृकन्यानां मनु अपुत्रस्त्रीधन भर्तुरिति वाक्यार्थं। स्त्रियास्तु यद्भवेद्वित्तं पित्रा दत्त कथञ्चन। ब्राह्मणी तद्धरेत्कन्या तदपत्यस्य वा भवेदिति मनूक्त। तदपत्य पुत्र। कन्यापत्यमित्यन्य। कन्याभावे दौहित्रो धनभाक्। दुहितॄणां प्रसूता चदित्यत्र विज्ञानेश्वरेण दौहित्रीपरत्वोक्त। कन्यादौहित्रो समवाये भिन्नमातृकाया दौहित्रो पितृतो भागकल्पनेतिवत् समांशप्राप्तौ कन्यामात्रस्य समवायाभावादपवादमाह।

मनु। यास्तासां स्युर्दुहितरस्तासामपि यथार्हत। मातामह्या धनात्किञ्चित-प्रदेयं प्रीतिपूर्वकम्। किञ्चिदिति तुर्यांश। अपिना समवायोक्त। कन्याभावे सर्वमहर्न्त्य इत्यम्। मातृभेदे विषमाणा मातृसङ्ख्यया भाग प्रतिमातृ वा स्ववर्गे भागविशेष इति गौतमोक्त। इदं शुल्कभिन्नपरम्। भगिनीशुल्कं सोदर्याणामूर्ध्वं मातुरिति गौतमोक्तेस्सोदराणामेव। शुल्कं मातुर्विवाहे पित्रा गृहीतम्।

अनूढायाःशुल्कभिन्ने धने तु बौधायनः। रिक्थं मृतायाःकन्याया गृह्णीयुः सोदरास्तदभावे मातुरिति दौहित्र्या अभावे दौहित्रःमातुर्दुहितरोऽभावे दुहितॄणां तदन्वय इति नारदोक्तेः। तच्छब्दो दुहितृपरः। तत्राप्यादौ दुहिता ततो दौहित्रःअवयवाधिक्यात्। नचेदं मनुवचनाद्दौहित्रमात्रपरम्। तत्रसमवायोक्तेरत्र चाभावोक्तेः। दौहित्रोपि ह्यमुत्रैनं संतारयति पौत्रवदिति मानवे पौत्रसाम्याच्च। दौहित्राभावे पुत्राः। याज्ञवल्क्येन ताभ्य ऋतेऽन्वय इत्युक्तस्य कन्यादिदौहित्रान्तानां वङ्क्रमत्वादन्ते विवेश इति विज्ञानेश्वरः।

तदभावे पौत्रः। पुत्रपौत्रैरृणं देयमिति पितामहो ऋणदाने पौत्रस्याधिकाराद्रिक्थभाज ऋणं प्रतिकुर्युरिति गौतमोक्तेश्च। शेषमृणादिति ऋणदातुःरिक्थहरत्वाच्च। पौत्राभावे प्रपौत्रः पुत्रःपौत्रश्च तत्पुत्रो भ्राता वा भ्रातुःसन्ततिरिति पिण्डदत्वात्। लोकानन्त्यं दिवः प्राप्तिः पुत्रपौत्रप्रपौत्रकैरित्युक्तेश्च। तदभावे सपत्नीदुहिता तत्पुत्रश्च। सर्वासामेकपत्नीनामित्युक्तेश्च। तदभावे सपत्नीजः। चैत्रजायास्तनयादत्त इति वृहस्पत्युक्तेश्च। नीचसपत्न्यास्तु ब्राह्मणीपुत्र एव हरेदित्युक्तम्। सपत्नीदौहित्राभावे भर्त्ता। अतीतायामप्रजसि बान्धवास्तदवाप्नुयुरिति याज्ञवल्क्योक्तेः। बान्धवा भर्त्रादयो वक्ष्यमाणा इति विज्ञानेश्वरापरार्कौ। जीमूतवाहनस्तु बान्धवा भ्रातरः। पितृभ्यां चैव यद्दत्तं दुहितुःस्थावरं धनम्। अप्रजायामतीतायां भ्रातृगामि तु सर्वदेति वृद्धकात्यायनोक्तेरित्याह। बन्धुदत्तं तु बन्धूनामभावे भर्तृगामितदिति कात्यायनोक्तेश्च।

याज्ञवल्क्यः। बन्धुदत्तं तथा शुल्कमन्वाधेयकमेव च। अप्रजायामतीतायां बान्धवास्तदवाप्नुयुः। बन्धवो मातृपितृभ्रातरः। अपरार्के बौधायनः। रिक्थं मृतायाःकन्याया गृह्णीयुः सोदराः स्वयम्। तदभावे भवेन्मातुस्तदभावे भवेत्पितुः। इदं विवाहात्पूर्वं कन्याधनपरं।

भ्रात्रभावे भर्त्ता। अप्रजस्त्रीधनं भर्त्ता ब्राह्मादिषु चतुर्ष्वपि। दुहितॄणां प्रसूता चेच्छेषेषु पितृगामि तदिति याज्ञवल्क्योक्तेः मिताक्षरायां तु। दुहितृपदं दुहितृदुहितृपरं मातुर्दुहितर इत्यत्र दुहितॄणामुक्तत्वात्। तेन सर्वविवाहेषु प्रसूताचेद्दुहितृदौहित्री दौहित्रपुत्रपौत्रप्रपौत्राणां तदभावेऽप्रजायाः ब्राह्मदैवार्षप्राजापत्यविवाहोढायाः धनं भर्तृगामि। गान्धर्वादिषु तु तस्याःमातापितरौ गच्छतीति तद्गामि। एकशेषे मातुः पूर्वत्वादित्युक्तम्। यत्तु मनुः। ब्राह्मदैवार्षगान्धर्वप्राजापत्येषु यद्धनम्। अप्रजायामतीतायां भर्तुरेव तदिष्यते। यत्तस्यै स्याद्धनं दत्तं विवाहेष्वासुरादिषु। अतीतायामप्रजसि मातापित्रोस्तदिष्यत

इति। गान्धर्वे भर्तुरुक्तः। गान्धर्वं मनुनोक्तः। क्षत्रियादेर्गान्धर्वस्तत्परं वा। तत्पितृलब्धधनपरं दत्तमित्युक्तं। भर्त्रभावे भर्तुः सम्बन्धिभिः प्रत्यासन्नैः पत्नीदुहितरश्चैत्यादिभिराप्यते। भर्तृगती सपत्नीदुहिता सपत्नीकन्येति विज्ञानेश्वरः। भर्तुरिति तृतीयार्थे षष्ठीति माधवः। गान्धर्वे विकल्प इत्यपरार्कः। जीमूतवाहनस्तु ब्राह्म आदिर्येषां चतुर्णां ते मनूक्ताः सगान्धर्वाः पञ्च। तेषु विवाहेषु मध्ये यल्लब्धं यौतुकं तद्भर्तुः आसुरपैशाचराक्षसेषु त्रिषु लब्धं पित्रोः। ब्राह्मादिष्विति श्रुतवर्तमानकालपरत्वं तद्दृष्टमात्रपरत्वम् अतीतस्य लक्षणायोगात्। तेन ब्राह्मादिषु यद्दत्तमिति सम्बन्धाध्याहृतमात्रपरमिदं न सर्वस्त्रीधनपरम्। विवाहात्पूर्वं परतो वा प्राप्तमन्वाधेयं बन्धुदत्तं च शुल्कस्यासुरादिविवाहष्वेव सत्त्वात्त्रयमप्यासुरादावेव भ्रातुस्तदभावे माता पितरौ बन्धुदत्तमिति याज्ञवल्क्योक्तेः। प्रागुक्तबौधायनोक्तेश्च। गौतमोऽपि भगिनीशुल्कं सोदर्याणामूर्द्ध्वं मातुरिति।

विवाहात्पूर्वं मृतायां शुल्के याज्ञवल्क्यः। मृतायां दत्तमादद्यात्परिशोध्योभयव्ययम्। वरकन्यापित्रोर्व्ययाविशिष्टं वरो हरेदित्यर्थः। पित्रोरभावे कात्यायनः। बन्धुदत्तं तु बन्धूनामभावे भर्तृगामि तत्। भर्तुरभावे सपत्नीकन्यापुत्रदौहित्राः। तदभावे श्वश्रूश्वशुरदेवरतत्सुतादयो भर्तृप्रत्यासन्नाः। पत्नीदुहितरश्चैवेत्युक्तेरिति विज्ञानेश्वरोपरार्कौ।

पुत्रपौत्रसपत्नीपुत्रदौहित्राभावे तु माधवोयेऽपरार्के च वृद्ध बृहस्पतिः। मातृष्वसा मातुलानी पितृव्यस्त्री पितृष्वसा। श्वश्रूःपूर्वजपत्नी च मातृतुल्याः प्रकीर्त्तिताः। यदासामौरसो न स्यात्सुतो दौहित्र एव वा। तत्सुता वा धनं तासां स्वस्रीयाद्याः समाप्नुयुः। औरसपदं पुत्रकन्यापरम्। सुतपदं सपत्नीकन्यापुत्रपरमिति जीमूतवाहनः। सर्वासामेकपत्नीनामेका चेत्पुत्रिणी भवेत्। सर्वास्तास्तेन पुत्रेण प्राह पुत्रवतीर्मनुरिति मनूक्तेः। पुत्रशब्दोऽपत्यमात्रपरः। स्त्रीधने कन्याप्राथम्यात्सपत्नीकन्यादौहित्रीदौहित्रसपत्नीपुत्राभावे भगिनीकन्यादयो धनभाजः। अतएव स्त्रियास्तु यद्भवेद्वित्तं पित्रा दत्तं कथञ्चन। ब्राह्मणी तद्धरेत्कन्या तदपत्यस्य वा भवेदिति मानवे सवर्णोत्तमवर्णसपत्नीकन्यातत्पुत्रपरमुक्तं मदनरत्ने। पितृपत्न्यः सर्वे मातर इति सुमन्तूक्तेः।

विद्यादौरसः पुत्रो जनन्या और्ध्वदैहिकम्। तदभावे सपत्नीजः चैत्रजाद्यास्तथा सुता इति मदनरत्ने कात्यायनेन चैत्रजाद्यपत्यपुत्रस्यान्तरं गत्योक्तेश्च। तत्सुतः सपत्नीसुतपुत्रः तदभावे भर्ता तदभावे तत्पुत्राभावे भगिन्याः कन्यापुत्रो वा भगिन्यभावे मातृष्वसुर्धनं गृह्णाति। ननान्दाया अपत्यं मातुलान्याः देवरापत्यं

पितृव्यस्त्रियाः। भ्रातृपुत्रः पितृष्वसुः। जामाताश्वश्र्वाः। देवरो ज्येष्ठभ्रातृपत्न्याः। धनं क्रमाद्गृह्णीयुरित्यर्थः। इदं भगिन्याद्यभावे तत्सत्त्वे तुल्यो विभागः सपत्नीतत्पुत्राभावे देवरादयः सत्त्वे तु तेषामेव धनम्। समोविभाग इति केचित्। तत्र प्रत्यासत्तेः मातापित्रोस्तद्दिशते इति मानवे तत्सम्बन्धिनां विधानान्माता तदभावे पिता तदभावे पत्नीदुहितरश्चैवेति क्रमेण सपत्नमातृतत्कन्यापितामही पितृव्यतत्पुत्रसपिण्डा धनभाजः। माधवस्तु मातापितृसम्बन्धिनः मातृष्वसापितृष्वसातत्पुत्रादयोऽहस्यत्युक्ता ग्राह्याः। तदभावे जामातृसपत्नमात्रादयः। सपत्नीपुत्रस्य स्नुषायाश्च पत्नीदुहितरइत्यत्रानुवादोक्तेर्नैव भाग इत्याह। जीमूतवाहनस्तु देवरस्य सर्वान्तेऽधिकारापत्तेः पाठो न तन्त्रम्। अनन्तरः सपिण्डाद्यस्तस्य तस्य धनं भवेदिति विरोधाच्च। तेन त्रयाणामुदकं कार्यं त्रिषु पिण्डःप्रवर्त्तते इति मनुना। पिण्डदोऽंशहरश्चैषामिति च पिण्डदस्य दायहरत्वोक्तेः। मातुलो भागिनेयश्च स्वस्रीयो मातुलस्य च। एतेषां चैव भार्याभ्यःपितुर्मातुःस्वसुस्तथा। श्राद्धमेषां हि दातव्यमिति वेदविदो विदुरित्यपरार्कं वृद्धशातातपोक्तेश्च। पिण्डदत्वात्क्रमः। तत्रादौ सपत्नीकन्यातद्दौहित्रपुत्राःतदभावे देवर तदभावे देवरसुतःपिण्डदत्वात्सपिण्डत्वाच्च पितृव्यस्त्रीधनहारी तदभावे स्नुषा श्वश्र्वादेश्च स्नुषा तत्तदभावे सपिण्डका इत्युक्तेः। तदभावे भगिनीपुत्रो मातृस्वसृधनहारी पिण्डदत्वात् तदभावे भर्तुर्भागिनेयो मातुलानीधनहरः। मातामहादित्रयभर्तॄणांपिण्डदत्वात्। तदभावे भ्रातृसुतःपितृष्वसुर्धनहरःतस्यास्तत्पित्रादेश्च पिण्डदत्वात्। तदभावे जामाता श्वश्रूश्वशुरयोर्धनहरः-पिण्डदत्वात्। एषामभावे सपिण्डा इत्याह।

इति कमलाकरभट्टकृते विवादताण्डवे स्त्रीधनविभागः।

इतिश्रीमत्पदवाक्यप्रमाणपारावारपारीणजगद्गुरुश्रीरामेश्वरभट्टसूरिसूनुनारायणभट्टात्मजश्रीकमलाकरभट्टकृतं विवादताण्डवं समाप्तम्।

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